



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: March 3, 2004***

### **REGIONAL WATER QUALITY CONTROL BOARD DIRECTION TO OLIN REGARDING TESTING FOR NORTHEAST GROUNDWATER FLOW**

**RECOMMENDED ACTIONS:** For information only.

**Agenda Item # 1**

**Prepared By:**

**Department Director**

**Submitted By:**

**City Manager**

**EXECUTIVE SUMMARY:** Attached is a letter dated February 19, 2004 from David Athey at the Central Coast Region of the Regional Water Quality Control Board asking Olin to submit a plan by April 16, 2004 for monitoring groundwater flow between the Olin site and the Nordstrom Park Well. The letter does ask Olin to do more than their original proposal dated in November 2003, however it still stops short of asking Olin to test for perchlorate in the monitoring wells they are to drill between their site and the Nordstrom Park Well.

The order does require that at least two monitoring wells be proposed with all boring logs to be submitted and that the wells consist of clusters of individually screened and sited monitoring wells. The letter further requires Olin to test for this groundwater flow over a full year, not for only the 90 day period originally proposed by Olin.

The City continues to believe it is critical to test the monitoring wells for perchlorate, not just monitor groundwater flow direction and in the last bullet point of the attached letter, Mr. Athey makes it clear that a final decision regarding perchlorate sampling will be made after he receives Olin's April 16, 2004 report.

City staff will continue to monitor this critical issue related to our groundwater supply and will periodically report to Council.

**FISCAL IMPACT:** None at this time.



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: March 3, 2004***

### **SUBDIVISION SD 03-14 APPLICATION: MISSION VIEW DR.- MISSION RANCH**

**RECOMMENDED ACTION:** Take no action, thereby concurring with the Planning Commission's decision regarding approval of the subdivision map.

**EXECUTIVE SUMMARY:** A request to subdivide a 9.46-acre portion of 98 acre site to allow for the construction of 38 units which will represent phases 7, 8 & 9 of the Mission Ranch project located on the south east corner of the intersection of Cochrane Rd. and Mission View Dr.

In April 2003, the Mission Ranch project was awarded a total of 38 building allocations (11 for FY 2004-05, 15 for FY 2005-06 and 12 for FY 2006-07) as part of the 2002 MP competition. To date 179 allocations have been granted to the Mission Ranch project.

The subdivision map as submitted is in compliance with the RPD plan approved by the City Council in April 2002. The lot sizes and locations are each per the approved RPD. The only deviation from the RPD is the separation of the corner duet units. In October 2003, the Council adopted Ordinance 1641 which allowed for modified setbacks for attached duets. Ordinance 1641 also allowed for the separation of the attached duets without a formal amendment of the approved RPD. The applicant has provided plot plans for the duets indicating the amended unit configurations for phases 7-9. Ordinance 1641 applies to units with Measure P allotments through FY 2004-05 and allotments for which building permits are issued by June 30, 2005. Of the 38 allotments currently awarded to the project, eight modified setback dwellings are proposed: two in Phase 7 (FY 2004-05), two in Phase 8 (FY 2005-06), and four in Phase 9 (FY 2006-07). Based on the provisions of Ordinance No. 1641, the modified setback dwellings in phases 7 & 8 can be approved at this time. The two modified setback dwellings shown for phase 8 (FY 2005-06) could be approved if building permits are issued by June 30, 2005. A copy of the development agreement is contained within this agenda as a separate action item.

No additional amenities will be provided with phases 7-9 however, the amenities provided to date are adequate to serve the existing and proposed development. In addition to the standard lot frontage improvements, Phases 7-9 will include the following improvements: the interior street connection between Mission View and Peet Rd. and complete the installation of bike/pedestrian path through the SCVWD land to connect to the tennis courts in the retention basin.

This application was reviewed by the Planning Commission at their January 27 meeting, at which time the Commission voted 6-0, approving the request. The Planning Commission resolution, conditions of approval, and subdivision map are attached. The staff report for the subdivision is attached to the development agreement request within this same agenda.

**FISCAL IMPACT:** No budget adjustment required

#### **Agenda Item # 2**

**Prepared By:**

**Senior Planner**

**Approved By:**

**Director of Community  
Development**

**Submitted By:**

**City Manager**



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: March 3, 2004***

### **HOUSING REHAB LOAN FOR COMMUNITY SOLUTIONS**

#### **RECOMMENDED ACTION(S):**

1. Approve an additional \$45,000 home improvement loan under the Agency's Housing Rehabilitation Loan Program for Community Solutions.
2. Authorize the City Manager to amend a \$33,000 1994 CDBG Rehab Loan to allow the loan to be forgiven in 10 years.
3. Authorize the City Manager to do everything necessary to prepare and execute loan documents and amend existing documents.

**EXECUTIVE SUMMARY:** In April 2003, the Housing Rehab Loan Committee approved a loan amount of \$40,000 for Community Solutions to rehabilitate the La Isla Pacifica Battered Women's Shelter. At that time only \$40,000 was available in the CDBG rehab fund but since then our CDBG Housing Rehab Fund has risen to over \$100,000 from loan repayments. Staff is recommending additional funds to allow a more complete renovation of the shelter. The Housing Rehab Loan Program guidelines require City Council approval for loans over \$40,000.

Community Solutions operates this 26 year old, 2200 square foot shelter located in Morgan Hill for the sole purpose of temporarily housing for battered women and their children. This shelter provides fourteen beds with twenty four hour staffing and counseling for victim needs. Staff believes this is a good opportunity to use CDBG rehab funds on a project that provides a crucial service for City residents.

The project was started with the \$40,000 CDBG loan from 2003. This amount has allowed for improvements to flooring and the client side kitchen and bathrooms. With additional funds the entire shelter will be renovated. This will include improvements such as: painting, new windows and doors, dry rot repair, storage area for food donations, work area reconfigurations, electrical, plumbing, HVAC, play area, fencing, security alarm and other miscellaneous items. Without this loan, Community Solutions will not be able to complete these much needed improvements.

In 1994 the City awarded a \$33,000 CDBG rehab loan at 3.5% due in twenty years for basic maintenance items, (i.e. baths, flooring, paint and roofing). More than likely, Community Solutions will not be able to repay this loan when it comes due in ten years. For this reason staff would like to address this issue now and amend the loan agreement to reflect similar terms as the second \$40,000 City Rehab Loan given in 2003. The second loan for \$40,000 in 2003 has terms of 3.75% interest and is forgivable if Community Solutions maintains a shelter of this type at this location for ten more years. We would add this forgivable clause to the first loan. It is recommended that the third \$45,000 loan have the same terms. All loans are to be secured with a Deed of Trust.

**FISCAL IMPACT:** There is over \$100,000 available in the CDBG rehab fund. The use of CDBG funds provides less risk to the City than other funds such as RDA 20% set aside funds. No budget adjustment required.

**Agenda Item # 3**

**Prepared By:**

**Housing Rehab Coordinator**

**Approved By:**

**BAHS Director**

**Submitted By:**

**City Manager**



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: March 3, 2004***

### **VTP 2030 LOCAL STREETS AND COUNTY ROADS PROGRAM – BUTTERFIELD BOULEVARD EXTENSION FROM TENNANT AVENUE TO WATSONVILLE ROAD**

#### **RECOMMENDED ACTIONS:**

1. Recommend Butterfield Boulevard Extension from Tennant Avenue to Watsonville Road Project as City's VTP 2030 Local Streets and County Roads Program project
2. Commit future local funding match with Traffic Impact Funds

**EXECUTIVE SUMMARY:** The City was invited by the VTA to recommend projects for the future Local Streets and County Roads (LS&CR) program which will make up a portion of the Valley Transportation Plan (VTP) 2030 now under consideration by the Valley Transportation Authority. The LS&CR program was first established as part of the VTP 2020, published in December 2000. LS&CR is a grant program funded from Federal Surface Transportation Program (STP), Congestion Mitigation and Air Quality (CMAQ), and State Transportation Improvement Program (STIP) funds. The stated goals of the LS&CR program are to provide funding for local transportation projects not directly connected to, or fully funded by new development and to increase connectivity of local streets and county roads by shortening trips, improving pedestrian and bicycle access and improve transit routing.

The Butterfield Boulevard extension to Watsonville Road is eligible for the LS&CR program and a recommendation is consistent with previous City programming and funding intentions. The project proposed is an extension of the arterial from Tennant Avenue to Watsonville Road per the General Plan. The project includes a grade separation at the Union Pacific Railroad track in the vicinity of Fisher Avenue. The total cost of the project is estimated at \$14 million. The recommendation for this project in the LS&CR program requests grant funding in the amount of \$7.2 million, which leaves a \$6.8 million match. The match amount will be derived from traffic impact fees which was anticipated and adopted in the traffic impact fee study prepared by Maximus in May of 2002. In the Maximus study, this project was projected to be funded by the LS&CR and traffic impact fee funds.

The recommendation of a project at this time complies with the planning phase of the program, which is a prerequisite for the next phase, the programming phase. The programming phase will occur when funds are available. The Valley Transportation Authority has no time table for the availability of LS&CR funds.

**FISCAL IMPACT:** By recommending the Butterfield Boulevard Extension from Tennant to Watsonville Road project for the LS&CR program, the City is committing traffic impact fees estimated now at \$6.8 million as a local match, as noted in our Traffic Impact Fee Report.

**Agenda Item # 4**

**Prepared By:**

**Deputy Director**

**Approved By:**

**Department Director**

**Submitted By:**

**City Manager**



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: MARCH 3, 2004***

### **APPROVE FINAL MAP FOR MORGAN LANE PHASE III (TRACT 9551)**

#### **RECOMMENDED ACTION(S):**

Authorize the recordation of the map following recordation of the Development Improvement Agreement

**EXECUTIVE SUMMARY:** Tract 9551 is a 10 unit subdivision located on the north side of East Central Avenue between Grand Prix Way and Serene Drive (see attached diagram). The developer has completed all the conditions specified by the Planning Commission in the approval of the Tentative Map on January 13, 2004.

The developer has furnished the City with the necessary documents to complete the processing of the Final Map and has made provision with a Title Company for the recordation of the Final Map.

**FISCAL IMPACT:** Development review for this project is from development processing fees.

**Agenda Item # 5**

**Prepared By:**

**Senior Engineer**

**Approved By:**

**Public Works Director**

**Submitted By:**

**City Manager**



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE:** *March 3, 2004*

### **AMENDMENT TO PLANNING DIVISION CONTRACT SERVICES BUDGET FOR UNANTICIPATED ENVIRONMENTAL CONSULTING SERVICES.**

#### **RECOMMENDED ACTION(S):**

Approve the appropriation of \$40,000 from the Community Development Fund Balance (206) to fund unanticipated environmental consulting services.

#### **EXECUTIVE SUMMARY:**

On February 4, 2004, the City Council conducted a hearing and received comments on the Revised Draft EIR (RDEIR) for the Institute Golf Course and Mathematics Conference Center Project located at 14830 Foothill Avenue in Morgan Hill. To complete the Final EIR for the project, the City's EIR consultant will need to respond to all comments received on the RDEIR. The consultant will also need to review and evaluate new technical information submitted to the City by the applicant along with their comment letter. An evaluation of the new technical data will determine: (i) whether the project description has been revised by the information submitted; (ii) how and to what extent the technical information changes the information in the RDEIR; and (iii) how the new information can be characterized in relationship to the previously proposed mitigation and the alternative mitigation discussed in the RDEIR. The Final EIR will include responses to all comments on the RDEIR and text amendments as appropriate to reflect whatever new or clarified information is now available.

Modifications to the project description and analysis of the new technical information from the applicant were not included in the scope of work and budget for this EIR. The Planning Commission has also requested that the results of the analysis of the new technical information be presented to the Commission for review and comment before inclusion in the Final EIR. Additionally, the City received a greater volume of comments on the RDEIR than anticipated (74 pages of public comment, 59 pages of comments from the project proponent, versus a total of 20 pages of comments anticipated in the scope of work). The original scope of work also did not include additional meetings requested by staff (two public workshops, one staff meeting to review analysis necessary to complete the FEIR instead of just two public hearings previously anticipated). The cost of this additional work and services will be approximately \$39,730.

Staff is requesting the City Council authorize an additional \$40,000, amended to the Planning Division Contract Services Account (206-5120-42231) to fund our unanticipated cost for environmental consulting services.

#### **FISCAL IMPACT:**

Funds exist in the unappropriated Community Development Fund balance to cover these expenses.

**Agenda Item # 6**

**Prepared By:**

**Planning Manager**

**Approved By:**

**Community  
Development Director**

**Submitted By:**

**City Manager**



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: March 3, 2004***

**Agenda Item # 7**

**Prepared By:**

**Deputy City Clerk**

**Approved By:**

**City Clerk**

**Submitted By:**

**City Manager**

### **ADOPT ORDINANCE NO. 1655, NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ADOPTING A PRECISE DEVELOPMENT PLAN CHANGING THE ZONING FROM R2-3,500 TO R2-3,500 RPD ON A 6.6-ACRES LOT AT THE NORTHEAST CORNER OF SAN PEDRO AVE AND BUTTERFIELD BLVD. (APN 817-11-061, ZA-03-14: SAN PEDRO-DICONZA)**

### **RECOMMENDED ACTION(S):**

**Waive** the Reading, and **Adopt** Ordinance No. 1655, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

### **EXECUTIVE SUMMARY:**

On February 18, 2004, the City Council Introduced Ordinance No. 1655, New Series, by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

### **FISCAL IMPACT:**

None. Filing fees were paid to the City to cover the cost of processing this application.

**ORDINANCE NO. 1655, NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ADOPTING A PRECISE DEVELOPMENT PLAN CHANGING THE ZONING FROM R2-3,500 TO R2-3,500 RPD ON A 6.6-ACRES LOT AT THE NORTHEAST CORNER OF SAN PEDRO AVE AND BUTTERFIELD BLVD. (APN 817-11-061, ZA-03-14: SAN PEDRO-DICONZA)**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAINS AS FOLLOWS:**

- SECTION 1.** The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.
- SECTION 2.** The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.
- SECTION 3.** An environmental initial study has been prepared for this application and has been found complete, correct and in substantial compliance with the requirements of California Environmental Quality Act. A mitigated Negative Declaration will be filed.
- SECTION 4.** The City Council finds that the proposed RPD Overlay District is consistent with the criteria specified in Chapter 18.18 of the Morgan Hill Municipal Code.
- SECTION 5.** The City Council hereby approves a precise development plan as contained in that certain series of documents dated January 23, 2004 on file in the Community Development Department, entitled "Lands of DiConza" prepared by MH Engineering. These documents show the location and sizes of all lots in this development and the location and dimensions of all proposed buildings, vehicle and pedestrian circulation ways, recreational amenities, parking areas, landscape areas and any other purposeful uses on the project.
- SECTION 6.** The approved project shall be subject to the conditions as identified in the set of standard conditions attached hereto, as exhibit "A", and by this reference incorporated herein.
- SECTION 7.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.



**SECTION 8.** Effective Date; Publication. This Ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 18<sup>th</sup> Day of February 2004, and was finally adopted at a regular meeting of said Council on the 3<sup>rd</sup> Day of March 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

**AYES:**           **COUNCIL MEMBERS:**  
**NOES:**          **COUNCIL MEMBERS:**  
**ABSTAIN:**      **COUNCIL MEMBERS:**  
**ABSENT:**       **COUNCIL MEMBERS:**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Irma Torrez, City Clerk

\_\_\_\_\_  
Dennis Kennedy, Mayor

**∞ CERTIFICATE OF THE CITY CLERK ∞**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA,** do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1655, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 3<sup>rd</sup> Day of March 2004.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE: \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**

**EXHIBIT A**  
**APPROVED DEVIATIONS**

<b>Phase</b>	<b>Lot #</b>	<b>Front</b>	<b>Left</b>	<b>Right</b>	<b>Rear</b>
I	1	20	3	5	12
I	3	20	5	3	12
I	4	18	3	5	15
I	7	19	5	3	10
I	9	20	0	14	15

1. Wing walls shall be a minimum of 3 feet from property lines.
2. BMR and MR units shall comply with Ordinance No. 1641 for modified setback dwellings.
3. Project: Phase I = 9 units Phase II = 7 units; Phase III = 8 units; Future Phase IV = 8 ; Total Project = 32 homes (including 3 BMR and 3 MR units)
4. Deviations are only allowed for those listed above and shown on the precise development plan on file with the Community Development Department. Setbacks not specifically called out shall comply with the site development standards of the R-2(3,500) zoning district.



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: March 3, 2004***

**Agenda Item # 8**

**Prepared By:**

**Deputy City Clerk**

**Approved By:**

**City Clerk**

**Submitted By:**

**City Manager**

### **ADOPT ORDINANCE NO. 1656, NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT, DA 03-11 FOR APPLICATION MP 02-07: CORY-SAN PEDRO PARTNERS. (APN 817-11-061)**

### **RECOMMENDED ACTION(S):**

**Waive** the Reading, and **Adopt** Ordinance No. 1656, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

### **EXECUTIVE SUMMARY:**

On February 18, 2004, the City Council Introduced Ordinance No. 1656, New Series, by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

### **FISCAL IMPACT:**

None. Filing fees were paid to the City to cover the cost of processing this application.

**ORDINANCE NO. 1656, NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY  
OF MORGAN HILL APPROVING DEVELOPMENT  
AGREEMENT, DA 03-11 FOR APPLICATION MP 02-07:  
CORY-SAN PEDRO PARTNERS. (APN 817-11-061)**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY  
ORDAINS AS FOLLOWS:**

**SECTION 1.** The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

**SECTION 2.** The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

**SECTION 3.** The Planning Commission, pursuant to Title 18, Chapter 18.78.125 of the Municipal Code and Resolution No. 03-17a & b, adopted May 27, 2003, has awarded allotments to that certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MP 02-07: Cory-San Pedro Partners	24 Single-Family Homes

**SECTION 4.** References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill. These documents to be signed by the City of Morgan Hill and the property owner set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

**SECTION 5.** The City Council hereby finds that the Residential Development Agreement and Development Proposal approved by this ordinance (and attached hereto) are compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

**SECTION 6.** Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

**SECTION 7.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

**SECTION 8.** Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 18<sup>th</sup> Day of February 2004, and was finally adopted at a regular meeting of said Council on the 3<sup>rd</sup> Day of March 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

**AYES: COUNCIL MEMBERS:**  
**NOES: COUNCIL MEMBERS:**  
**ABSTAIN: COUNCIL MEMBERS:**  
**ABSENT: COUNCIL MEMBERS:**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Irma Torrez, City Clerk

\_\_\_\_\_  
Dennis Kennedy, Mayor

**∞ CERTIFICATE OF THE CITY CLERK ∞**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA**, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1656, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 3<sup>rd</sup> Day of March 2004.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE: \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**

City of Morgan Hill  
Ordinance No. 1656, New Series  
Exhibit A

RECORD AT NO FEE PURSUANT TO  
GOVERNMENT CODE SECTION 6103

Recorded at the request of  
and when recorded mail to:

City of Morgan Hill  
Community Development Department  
17555 Peak Avenue  
Morgan Hill, CA 95037

RESIDENTIAL DEVELOPMENT AGREEMENT

This Agreement entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by and between SAN PEDRO AVENUE LTD under the Agreement, ("Property Owner") and the CITY OF MORGAN HILL, a municipal corporation organized and existing under the laws of the State of California (the "City").

RECITALS

This Agreement predicated upon the following facts:

A. Government Code Sections 65864-65869.5 authorize the City of Morgan Hill to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property;

B. Under Section 65865, the City of Morgan Hill has adopted rules and regulations establishing procedures and requirements for consideration of Development Agreements as contained in Title 18, Chapter 18.80 of the City of Morgan Hill Municipal Code;

C. The parties hereto desire to enter into a Development Agreement and proceedings have been taken in accordance with the City's rules and regulations;

D. The City of Morgan Hill has found that the Development Agreement is consistent with the General Plan and commitments made through the Residential Development Control System of the City of Morgan Hill (Title 18, Chapter 18.78 of the Municipal Code);

E. In light of the substantial commitments required to be made by Property Owner and in exchange for the consideration to be provided to the City by Property Owner as set forth herein, the City desires to give Property Owner assurance that Property Owner can proceed with the project subject to the existing official policies, rules and regulations for the term of this Development Agreement;

F. On \_\_\_\_\_, 2004, the City Council of the City of Morgan Hill adopted Ordinance No. \_\_\_\_\_, New Series approving the Development Agreement with the Property Owner, and the Ordinance thereafter took effect on \_\_\_\_\_, 2004.

NOW, THEREFORE, the parties agree:

1. Definitions. In this Agreement, unless the context otherwise requires:
  - (a) "City" is the City of Morgan Hill.
  - (b) "Project" is that portion of the development awarded building allotments as part of the Residential Development Control System by the City of Morgan Hill.
  - (c) "Property Owner" means the party having a legal or equitable interest in the real property as described in Paragraph 3 below and includes the Property Owner's successor in interest.
  - (d) "Real Property" is the real property referred to in Paragraph 3 below.
2. Exhibits. The following documents are referred to in this Agreement, attached and made a part by this reference:

Exhibit "A"	-	Development Allotment Evaluation
Exhibit "B"	-	Development Review and Approval Schedule
Exhibit "C"	-	Legal Description of Real Property
- In the event there is any conflict between this Development Agreement and any of the Exhibits referred to above, this Development Agreement shall be controlling and superseding.
3. Description of Real Property. The real property which is subject to this Agreement is described in Exhibit "C".
4. Interest of Property Owner. Property Owner represents that he has a legal or equitable interest in the real property.
5. Assignment. The right of the Property Owner under this agreement may not be transferred or assigned unless the written consent of the City is first obtained which consent shall not be unreasonably withheld. The Property Owner shall provide the City with names, address, and phone numbers of the party to whom the property is to be transferred and Property Owner shall arrange an introductory meeting between the new owner, or his agent, and City Staff to facilitate consent of the City.
6. Recordation of Development Agreement. No later than ten (10) days after the City enters into this Agreement, the Clerk of the City shall record an executed copy of this Agreement in the Official Records of the County of Santa Clara. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, successors in interest to the parties to this Agreement; provided, however, that this Agreement shall not be binding upon any consumer, purchaser, transferee, devisee, assignee or any other successor of Property Owner acquiring a completed residential unit comprising all or part of the Project.
7. Relationship of Parties. Property Owner and the City agree that each is not the

agent of the other for purposes of this Agreement or the performance hereunder, and Property Owner is an independent contractor of the City.

8. City's Approval Proceedings for Project. On November 7, 2001, the City of Morgan Hill approved a Precise Development Plan for the real property as part of its Residential Control System Review. This approval is described in proceedings designated File No. MP-02-07: Cory-San Pedro Partners, on file in the Office of Community Development to which reference is made for further particulars. The development plan provides for the development of the property as follows:

Construction of 24 single family homes as approved by the City of Morgan Hill Planning Commission.

9. Changes in Project.

(a) No substantial change, modification, revision or alteration may be made in the approved development plan without review and approval by those agencies of the City approving the plan in the first instance, which approval shall not be unreasonably withheld. No minor changes may be made in the approved development plan without review and approval by the Director of Community Development of the City, or similar representation if the Director is absent or the position is terminated, which approval shall not be unreasonably withheld.

(b) Any change specified herein and approved by this Development Agreement shall be deemed to be an allowable and approved modification to the Development Plan.

(c) In the event an application to change, modify, revise or alter, the development plan is presented to the Director of Community Development or applicable agencies of the City for review and approval, the schedule provided in Exhibit "B" shall be extended for a reasonable period of time as agreed to by the parties hereto to accommodate the review and approval process for such application.

(d) In the event the developer is unable to secure construction liability insurance because the project contains attached dwellings, the developer may convert the attached units into zero lot line or reduced setback detached units, subject to the review and approval of the Architectural Review Board. A zero lot line or reduced setback detached unit is defined as a dwelling physically separated from an adjacent dwelling on a separate lot of record but architecturally connected by a design element to give the appearance of attachment. In order to qualify for zero lot line or reduced setback detached units, evidence shall be provided to the City that the developer is unable to obtain construction liability insurance due specifically to the attached dwellings. This provision is contingent upon City Council approval of amendments to Title 18 of the Morgan Hill Municipal Code (the Zoning Code) to allow zero lot line or reduced setback detached units.

10. Time for Construction and Completion of Project.

(a) Securing Building Permits and Beginning Construction. Unless excused from performance as provided in Paragraph 27 hereof, Property Owner agrees to secure building permits by (see Exhibit "B") and to begin construction of the Project in accordance with the time requirements set forth in the Uniform Building Code and the City's Residential Development Control System (see Exhibit "B") as these exist on the date of execution of this Agreement. In



the event Property Owner fails to comply with the above permit issuance and beginning construction dates, and satisfactory progress towards completion of the project in accordance with the Residential Development Control System, the City, after holding a properly noticed hearing, may rescind all or part of the allotments awarded to the Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments.

(b) Progress Reports Until Construction of Project is Complete. Property Owner shall make reports to the progress of construction in such detail and at such time as the Community Development Director of the City of Morgan Hill reasonably requests.

(c) City of Morgan Hill to Receive Construction Contract Documents. If the City reasonably requests copies of off-site and landscaping contracts or documents for purpose of determining the amount of any bond to secure performance under said contracts, Property Owner agrees to furnish such documents to the City and the City agrees to maintain the confidentiality of such documents and not disclose the nature or extent of such documents to any person or entity in conformance with the requirements of the California Public Records Act.

(d) Certificate of Completion. Within thirty (30) days after completion to the City's satisfaction of 25% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 50% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 75% of the total number of units, and after all public and private improvements have been completed to the City's satisfaction, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 100% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of the entire project. Upon issuance of the certificate of completion for 100% of the total units, this Development Agreement shall be deemed terminated as to the entire project.

11. Hold Harmless. Property Owner agrees to defend and hold the City and its officers, agents, employees and representatives harmless from liability for damage or claims for damage for personal injury including death or claims for property damage which may arise as a result of the construction of the project by the Property Owner or his contractor, subcontractor, agent, employee or other person acting within the course and scope of the authority of Property Owner.

Property Owner further agrees to hold the City and its officers, agents, employees, and representatives harmless from liability for damages or claims for damages suffered or alleged to have been suffered as a result of the preparation, supply, and/or approval of the plans and specifications for the project by the City or its officers, agents, employees or representatives.

Nothing herein shall require or obligate Property Owner to defend or hold the City and/or its officers, agents, employees and representatives harmless from or against any damages, claims, injuries, death or liability resulting from negligent or fraudulent acts of the City or its officers, agents, employees or representatives.

12. Insurance. Property Owner shall not commence actual construction under this Agreement until Property Owner has obtained insurance as described herein and received the

approval of the City Attorney of Morgan Hill as to form and carrier, which approval shall not be unreasonably withheld. Property Owner agrees to maintain such insurance from a date beginning with the actual commencement of construction of the Project and ending with the termination of the Agreement as defined in Paragraph 20.

(a) Compensation Insurance. Property Owner shall maintain Worker's Compensation Insurance for all persons employed by Property Owner at the site of the Project, not including the contractor and or subcontractors on the site. Property Owner shall require each contractor and subcontractor similarly to provide Worker's Compensation Insurance for themselves and their respective employees. Property Owner agrees to indemnify the City for damage resulting from its failure to obtain and maintain such insurance and/or to require each contractor or subcontractor to provide such insurance as stated herein.

(b) Public Liability and Property Damage Insurance. Property Owner agrees to carry and maintain public liability insurance against claims for bodily injury, death or property damage to afford protection in the combined single limit of not less than One Million Dollars (\$1,000,000).

(c) Additional Insured. Property Owner shall obtain an additional insured endorsement to the Property Owner's public liability and property damage insurance policy naming the City, its elective and appointive boards, commissions, agents, and employees, as additional insured.

13. Cancellation of Insurance. On or before the commencement of actual construction of the Project, Property Owner shall furnish the City satisfactory evidence that the insurance carrier selected by the Property Owner and approved by the City will give the City of Morgan Hill at least ten (10) days prior written notice of cancellation or reduction in coverage of a policy.

14. Specific Restrictions on Development of Real Property. Notwithstanding the provisions of land use regulations otherwise applicable to the real property by virtue of its land use designation of Multi-Family Low and zoning classification of R2-3,500 / RPD, the following specific conditions of the Residential Development Control System building allotment approval govern the use of the property and control over provisions in conflict with them, whether lots are developed by the Property Owner or by subsequent property owners:

(a) Permitted uses of the property are limited to the following:

That shown on the Vesting Tentative Map, Grading Plans and Precise Residential Development Plans, as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

(b) Maximum density (intensity of use) is:

That shown on the Vesting Tentative Map, Grading Plans and Precise Residential Development Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

(c) Maximum height for each proposed building is:

That height shown on the Architectural plans as approved by the City of Morgan Hill under the Site and Architectural Review Process.

(d) Landscaping and recreational amenities, as shown on Site, Architectural, Landscape and Grading Plans as approved by the City of Morgan Hill Planning Commission and the Site and Architectural Review Process.

(e) All public improvements shall be installed by the Property Owner along property frontages to the satisfaction of the Public Works Department consistent with the Site, Architectural, Landscape and Grading Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

(f) All architectural features and materials for all structures shall be constructed as shown on the Architectural plans as approved by the Site and Architectural Review Process.

(g) Property Owner agrees to any other reasonable condition of approval resulting from subdivision, site review and environmental review, which conditions are on file with the City.

(h) Property Owner agrees to include the following safety features in the development:

(i) Provide fire escape ladders for upper floor bedrooms.

(ii) Provide one mounted fire extinguisher (rated 2A10BC) for up to the first 1,500 square feet of floor space, plus one fire extinguisher for each additional 1,500 square feet of floor space.

(iii) Provide outdoor lighting to meet all police department specifications.

(iv) Install illuminated or self luminous address numbers for each unit and painted curb numbers where possible.

(v) Use of noncombustible siding materials on at least fifty percent of the units within the project. The noncombustible siding must be used on at least fifty percent on an individual unit.

(vi) Will provide an approved and monitored fire and intrusion alarm system within each unit.

(vii) Provides automatic earthquake shut-off valves for gas service.

(i) Property Owner agrees to include the following open space improvements in the development:

(i) Park and open space to be maintained by a Home Owners Association (HOA).

(ii) Project provides a path connection to the future Butterfield Channel pathway.

(iii) Continuous open space buffer, 10 feet in excess of minimum, will be provided along the Butterfield street frontage.

(j) Property Owner agrees to include the following landscape improvements in the development:

- (i) Applicant will provide and install 24" box size trees (City approved) with a minimum height of nine feet and spread of three to four feet, at a ratio of one per ten site trees (excludes street trees).
- (ii) Developer will install varied front yard landscaping plans.
- (iii) Deciduous trees will be planted along the south facing side of homes or buildings to conserve energy.
- (iv) All street trees (two trees per lot, three trees per corner lot) will be 24-in. box trees from the city-approved list.
- (v) Landscape planting and irrigation systems shall be designed to conserve water.
- (vi) Drought tolerant grasses shall be used for lawn areas. Lawn areas will not exceed 25 percent of landscape area (exclusive of parks).
- (vii) Automatic irrigation systems will utilize separate valves and circuits for trees; shrubs and ground covers; and lawns areas. Minimum of four separate valves will be provided.
- (viii) Water conserving irrigation system will be used within the development
- (ix) Developer shall install non-irrigated hardscape coverage on at least 15 percent of landscape area (does not include pedestrian walkways across circulation aisles).
- (x) At least 50% of all plant material used shall be water conserving plans will be used from City Selected Plant list.
- (xi) Landscaping shall be installed on all areas visible from public and private rights-of-way.
- (xii) Site plan will preserve 6 trees on by site by either designing around the trees or relocating them..
- (xiv) Project design includes 6' good neighbor fencing.

(k) Property Owner agrees to the following school impact mitigations:

- (i) Applicant agrees to pay the district-adopted developer fees as required by the Leroy F. Greene Schools Facilities Act of 1998.
- (ii) The applicant will contribute \$3000.00 per unit to provide off-street pedestrian safety improvements or traffic safety improvements near a MHUSD school. The \$96,000.00 can be used for the safety improvements per the MHUSD as follows:
  - The applicant will install sidewalk which is not in place along the "Windmill" mobile home park on the north side of San Pedro Ave.
  - And/or: install crossing signals at Barrett and Juan Hernandez drive.

And/or: The balance of the funds can be used for the caution signals at Barrett Elementary School or other safety improvements per the MHUSD

(l) Property Owner agrees to the following pedestrian and bicycle safety improvements:

(i) Project will provide striping for Class II bike lanes along Butterfield.

(m) Property Owner agrees to purchase 2 transferable development credit (TDC's) for every twenty-five dwelling units proposed. The applicant is currently proposing 24 units. Should purchase of the TDC's prove infeasible, Property Owner may, at City's option, pay an in-lieu open space fee in an amount satisfactory to the City Council. Proof of unsuccessful negotiation for the TDC's must be presented to the City with the request of the in-lieu fee option. Building permits will not be granted unless this provision has been complied with to the satisfaction of the City Council.

(n) Property Owner agrees to include the following construction features in the development:

(i) Project will include installation of EPA "Energy Star" windows.

(ii) This project will include 15% reduction over minimum T-24 compliance will be achieved thru dual pane low-E vinyl windows and furnace efficiency of .90 and AC SEER of 12.0 in all units.

(iii) Project will include two separately zoned high-efficiency heating systems in units to conform. A minimum of 60 percent of the dwelling units in the project will be dual-zoned and all units will include the installation of high efficiency gas furnaces with 90 percent efficiency rating or greater.

(iv) Project will include the installation of a recirculation hot water distribution system.

(v) Class A roof covering will be installed with two layers of 30# felt.

(vi) Will install ground ring cast-iron drainage pipes and piping insulation between floors for sound reduction of plumbing.

(vii) Will provide future ready wiring.

(viii) Will provide the following on all units:

- 2x6 exterior studs
- Garages finished with 5/8" type "X" gyp board.
- Oversized floor framing member throughout
- Pre-plumb gas lines to dryer along with 220 volt current.
- Interior walls between units will be insulated for sound.

(ix) Project will include balconies used on minimum of 25% of the units viewed from the public right-of-way.

(x) Will uses at least two different roof lines and two different pitches throughout the project.

(xi) Project will include architectural designs considered conforming to adjacent neighborhoods.

(xii) Project will include consistent level of architectural relief be on all four sides and architectural relief on all visible elevations. A varied color pallet to conform will be used.

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- (xiii) Project will install sound insulation board in all units near noise sources.
- (xiv) Nine modified dwellings are allowed in Phase I of the project if the building permits are obtained by June 30, 2005.
- (xv) Project will provide harmonious use of exterior building materials and varying front elevations with low repeat factors.
- (xvi) Project will include the installation of an AC unit with SEER rating of 12 or higher.
- (xvii) Project will include the installation of cast iron pipe with piping insulation RJ6 and CAT54R wiring using home runs to main box.
- (xviii) The applicant will be required to install an 8 ft. noise barrier along the west property lines of lot 8 in Phase III and a 6 ft. noise barrier along the south boundary of lots 6 through 8 in Phase III and a 6 ft. noise barrier along the east side of lot 6 in Phase III. The barriers will need to be constructed solidly over the entire surface and at the base of the barrier. Suitable materials for the barrier construction should have a minimum surface weight of 3 lbs/ft<sup>2</sup>, such as one-inch thick wood, masonry block, or concrete.
- (xix) Units on Lots 3-5 of Phase II and lots 1-3 and 6-8 of Phase III will have an interior noise level higher than 45 dBA therefore additional noise mitigations will be needed for those units. Mitigation will include, but not be limited to, sound rated windows and doors, special wall constructions, acoustical sealants, weather-stripping, etc. The buildings will also include forced air mechanical units.
- (xx) Building plans will be reviewed by an acoustical specialist to identify any necessary measures that would be required to maintain interior average (Ldn) and maximum noise at acceptable levels prior to issuance of building permits.

- (o) The Property Owner agrees to provide the following circulation improvements:
- (i) Applicant agrees to install full street improvements on west side of Cory Drive along project frontage.
  - (iii) Applicant agrees to install a bus stop on Butterfield Boulevard. The location has been approved by VTA and is located on an approved county transit bus route.
  - (iv) The project proposes to install on-site pathway through open space area to San Pedro Avenue.
  - (v) Overall street layout for entire project will provide for the future extension of a street to the easterly project boundary.
  - (vi) Project will eliminate an existing stub street at San Juan Drive.
  - (vii) Project will construct street improvements along San Pedro frontage.

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- (viii) Project shall provide a minimum 20 foot clear view back-out distance between the garage and travel way.
- (ix) The proposed access points to the project shall provide adequate circulation for emergency response and police patrol.
- (x) Applicant shall install curvilinear street and a cul-de-sac to discourage fast through traffic.
- (xi) The interior streets meet all city standards.
- (xii) Applicant shall install a landscaped median and entry statement at project entrance from San Pedro Avenue.
- (xiii) Applicant agrees to obtain right-of-way dedication and install street improvements along the southerly extension of Walnut Grove Drive from behind Lawrence Oak Center to San Pedro Avenue per city wide circulation plans at a cost not to exceed \$5,000 per unit or \$165,000. The applicant agrees to the following phasing of the Walnut Grove Drive extension:
  - a. Phase I. Obtain dedication letter the Walnut Grove Drive extension.
  - b. Phase II & III. Clearing and grubbing of Walnut Grove extension. Install curb, gutter, and sidewalk and install a 10" water main.
  - c. Future Phase IV. Finish paving and installation of street lights.

(p) The Property Owner agrees to provide the following Storm Drain improvements:

- (i) Applicant agrees to grid the existing water mains in Walnut Grove Drive alignment between southern terminus behind Lawrence Oak Center to San Pedro Avenue with 10-inch main.
- (ii) All storm drain lines are within the paved area of the street.

(q) The Property Owner agrees to provide the following park and recreation improvements:

- (i) Applicant shall dedicate a minimum of .97 acres of park space.
- (ii) All parks and open space areas will be maintained through a Home Owners Association.
- (iii) Passive recreation area, 1 tot lot, and 1 cabana will be provided within the park and open space area.
- (iv) Pathways shall be provided which link park and open space areas, San Pedro Avenue and Butterfield Channel Pathway.
- (v) Will pay double in lieu parks fees.
- (vi) Applicant shall install a fence between the park and the Butterfield Channel as approved by the Architectural Review Board.

(r) The Property Owner agrees to provide the following lot layout and orientation improvements:

- (i) A minimum five-foot front setback variation shall be provided

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between the single-family dwellings, and four foot front setback variation shall be provided between the adjoining units.

(ii) A minimum five-foot rear setback variation shall be provided for the single family dwellings, and four-foot rear setback variation shall be provided for multi-family dwelling per the criteria.

(iii) Project shall provide variation is garage placement and provide tandem garages.

(iv) Sound insulation will be provided on attached walls and exteriors facing Butterfield and AC units will be located away from property lines.

(s) The Property Owner agrees to provide the following natural and environmental features:

(i) Fill and excavations shall be less than three feet.

(ii) All roads shall follow the existing and natural topography.

(iii) Site plan shall preserve mature trees where possible.

(iv) The project shall use a design and layout technique that gives individuals maximum privacy within and outside the home.

(v) Project shall arrange buildings, access-ways and locate open space to eliminate the need for sound walls.

(vi) Drywall is to be source separated and recycled. Cardboard containers and boxes will be source separated and recycled.

(t) Water mains either new or existing shall be gridded from San Pedro. Walnut Grove Drive behind Lawrence Oak Center.

(u) The Property Owner shall record constructive notice on the Final Map for the development that each lot is subject to the requirements of this Development Agreement, and that commitments under the Agreement which the City has permitted the Property Owner to delay must be fulfilled by the next subsequent property owners.

(v) Property Owner agrees to include the following housing types in the development:

(i) Two low income for sale, Below Market Rate units of approximately 1489 sq. ft., with three bedrooms and two bathrooms.

(ii) Three moderate rate units (Non-BMR's). The final sales price (at close of escrow) for the three moderate rate units will be based on HUD income limits for a family of 4 at the closing date.

(u) Property Owner agrees to include the following affordable housing features in the development:

(i) The Property Owner shall provide at least two (2) of the units for participation in a Below Market Rate (BMR) for sale program approved by the Community Development Department. The BMR units shall be approved by the City of Morgan Hill Planning



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Commission and Site and Architectural Review process. One of the BMR units shall be under construction and the framing inspection passed prior to the issuance of the 10<sup>th</sup> building permit and framing inspection passed on the second unit prior to the issuance of the 23<sup>rd</sup> building permit.

- (ii) The Property Owner agrees to pay 20 percent of the per unit cost of the standard housing mitigation fee payable to the City of Morgan Hill prior to the issuance of the 15th building permit.
- (iii) Below Market Rate (BMR) purchasers shall be treated in the same manner as purchasers of non-BMR units. Developer, including Developer's company, employees, and/or agents) agrees to assist BMR purchasers with all phases of the sales transaction, including, but not limited to, the preparation of any and all documents necessary to complete the sale and representation by a licensed real estate agent/broker.
- (iv) Property Owner will provide the buyer(s) of the BMR unit(s) the same option to upgrade the materials in the BMR home as a market rate buyers would in the market rate homes.
  - 1. Property Owner will provide the same level of customer service to the BMR buyer as the market rate buyer.
  - 2. The Below Market Rate (BMR) Program Guidelines are hereby incorporated herein in full by this reference.
  - 3. Exterior trim entry door hardware, and finish to the same standard as the Market Rate.
  - 4. Minimum standards for equipment, fixtures, appliances and finishes have been established for the BMR units. All items installed shall be of good quality. Good quality shall be deemed as entry level but generally not the lowest level of product offered for that application. All products shall offer durability, reliability and maintain a quality appearance and function that is standard to most other median priced homes in the area. The below listed items must be installed as a basic feature of each BMR home.

Minimum Interior standard finishes will be as follows:

- All closets shall have doors
- Interior doors to be raised panel type or same as market rate
- Door hardware to be brass finish or the equivalent
- Appliances shall be major brand name

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- Microwave hood shall be installed over stove
- Kitchen counters shall be white ceramic tile
- Kitchen cabinets shall be stained wood with white melamine interiors
- Units will be roughed in for AC including electrical and line set.
- Basic alarm system to secure all openings to the home
- Carpet in bedrooms, hallways, family rooms
- Linoleum or tile in entry, bathrooms kitchens
- Laminate flooring may be substituted for carpet or linoleum
- Electric garage door opener

15. Effect of Agreement on Land Use Regulations.

(a) Unless otherwise provided herein or by the provisions of the Residential Development Control System, the rules, regulations and official policies governing permitted uses of the real property, governing density and governing the design, improvement and construction standards and specifications applicable to development of the real property are those rules, regulations and official policies, including without limitation building code requirements, in force at the time of the execution of this Agreement.

(b) This Agreement does not prevent the City, in subsequent actions applicable to the real property, from applying new rules, regulations and policies which do not conflict with those rules, regulations and policies applicable to the real property as set forth in Paragraph 14 and in effect at the time of the execution of this Agreement. Any rules, regulations or policies enacted by the City subsequent to the execution of this Agreement, which are in conflict with those rules, regulations and policies in effect at the time of the execution of this Agreement or in conflict with the terms of this Agreement shall not be applied to the Project.

(c) The City shall be entitled to impose development fees in effect at the time a vested tentative map or other equivalent map is approved, rather than those in effect as of the date of this Agreement. The City shall be entitled to apply building standards in effect at the time the building permits are actually issued, rather than those in effect as of the date of this Agreement.

(d) This Agreement does not prevent the City from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations and policies.

(e) Nothing contained herein will give Property Owner a vested right to develop the described Project or to obtain a sewer connection for said Project in the absence of sewer capacity available to the Project.

16. State or Federal Law. In the event that state or federal laws, or regulation, enacted after this Agreement have been entered into, prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations.

17. Periodic Review.

(a) The City shall review this Agreement at least at four times per year and on a schedule to assure compliance with the Residential Development Control System, at which

time the Property Owner is required to demonstrate good faith compliance with the terms of this Agreement.

(b) If, as a result of such periodic review, the City finds and determines, on the basis of substantial evidence, that Property Owner has not complied in good faith with the terms or conditions of this Agreement, the City may rescind all or part of the allotments awarded to Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments.

18. Amendment or cancellation of Agreement. This Agreement may be amended, or canceled in whole or in part, by mutual consent of the parties and in the manner provided for in California Government Code Section 65868, 65867 and 65867.5.

19. Enforcement. Unless amended or canceled pursuant to Paragraph 18 hereof, this Agreement shall be enforceable by any party to it notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the City, which alters or amends the rules, regulations or policies specified in Paragraphs 14 and 15.

20. Termination of Agreement. This Agreement shall terminate upon the occurrence of one or more of the following events or conditions:

(a) The City finds and determines, in accordance with the terms of Paragraph 17, that Property Owner has not reasonably complied in good faith with the terms of this Agreement and the City elects to terminate this Agreement;

(b) Property Owner gives the City written notice of its decision to terminate this Agreement;

(c) Property Owner and the City mutually consent to termination of this Agreement in accordance with the terms of Paragraph 18; or

(d) Issuance of the Certificate of Completion referred to in Paragraph 10(d), provided that this Agreement shall only terminate with respect to that part of the Project to which the Certificate of Completion applies.

21. Default by Property Owner. Property Owner shall be in default under this Agreement upon the occurrence of one or more of the following events or conditions:

(a) If a written warranty, representation or statement was made or furnished by Property Owner to the City with respect to this Agreement, which was known or should have been known to be false in any material respect when it was initially made;

(b) A finding and determination by the City of Morgan Hill made following a periodic review under the procedure provided for in Government Code Section 65856.1 that upon the basis of substantial evidence, the Property Owner has not complied in good faith with one or more of the material terms or conditions of this Agreement.

22. Default by the City of Morgan Hill. The City is in default under this Agreement upon the occurrence of one or more of the following events or conditions:

(a) The City, or its boards, commissions, agencies, agents or employees, unreasonably fails or refuses to take action on proposals, applications or submittal presented by the Property Owner within a reasonable time after receipt of such proposals, applications or submittal.

(b) The City unreasonably fails or refuses to perform any obligation owed by it under this Agreement.

(c) The City imposes upon Property Owner rules, regulations or official policies governing permitted uses, density, maximum height and size of proposed structures and reservations (dedications) of land for public purposes of the Property or the design, improvement and construction standards and specifications applicable to the development of the Property, which are not the same in all material respects as those rules, regulations and official policies in effect at the time of the execution of this Development Agreement and which adversely and materially affect the Project.

23. Cure of Default.

(a) This section shall govern cure of defaults except to the extent to which it may be in conflict with the Residential Development Control System. Upon the occurrence of an event of default by either party, the party not in default (the "non-defaulting party") shall give the party in default (the "defaulting party") written notice of the default. The defaulting party shall have thirty (30) calendar days from the date of notice (subject to subsection (b) below) to cure the default if such default is curable within thirty (30) days. If such default is so cured, then the parties need not take any further action except that the defaulting party may require the non-defaulting party to give written notice that the default has been adequately cured.

(b) Should the default not be cured within thirty (30) calendar days from the date of notice, or should the default be of a nature which cannot be reasonably cured within such thirty (30) day period and the defaulting party has failed to commence within said thirty (30) day period and thereafter diligently prosecute the cure, the non-defaulting party may then take any legal or equitable action to enforce its rights under this Development Agreement.

24. Remedies.

(a) In the event Property Owner defaults under the terms of this Agreement, the City, after holding a properly noticed hearing may rescind all or part of the allotments awarded to Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments or may terminate or modify this Development Agreement.

(b) In the event the City defaults under the terms of this Agreement, in no event shall the Property Owner be entitled to any of the following:

- (i) Punitive damages;
- (ii) Damages for lost profits;
- (iii) Damages for expenditures or costs incurred to the date of this Agreement.

(c) The parties hereby explicitly acknowledge and agree that remedies for any issue or dispute arising out of the performance or non-performance of this Agreement are limited to those provided under actions for mandamus, declaratory relief and/or specific performance. The parties further agree that in no event shall any party shall maintain any action, claim or prayer for damages pursuant to any alleged federal or state constitutional or statutory claim, or incurred as a result of an alleged breach of this Agreement.

25. Attorneys Fees and Costs. If legal action by either party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs.

26. Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid addressed as follows:

City of Morgan Hill:                      Community Development Department  
City of Morgan Hill  
17555 Peak Avenue  
Morgan Hill, CA 95037

With a copy to:                              City Clerk  
City of Morgan Hill  
17555 Peak Avenue  
Morgan Hill, CA 95037

Property Owner:                              San Pedro Avenue LTD  
1999 S. Bascom Ave, Suite 500  
Campbell, CA 95008

A party may change the address shown above by giving notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

27. Force Majeure. Either party hereto, acting in good faith, shall be excused from performing any obligations or undertakings provided in this Agreement in the event and for so long as the performance of any such obligation is prevented, delayed, retarded or hindered by an act of God, fire, earthquake, floods, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, strikes, lockouts, eminent domain, inability to obtain labor or materials or reasonable substitutes therefor, non City governmental restrictions, regulations or controls, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, or any court action or judicial orders; unreasonable delays in processing applications or obtaining approvals, consent or permits, filing of legal actions, or any other cause, not within the reasonable control of such party. Active negligence of either party, its officers, employees or agents shall not excuse performance.

28. Rules of Construction and Miscellaneous Terms.

(a) The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive.

(b) If a part of this Agreement is held to be invalid, the remainder of the Agreement is not affected.

(c) This writing contains in full, the final and exclusive Agreement between the parties.

(d) The time limits set forth in this Agreement may be extended by mutual consent of the parties.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the day and year first above written.

APPROVED AS TO FORM:

CITY OF MORGAN HILL

\_\_\_\_\_  
HELENE LEICHTER, City Attorney

\_\_\_\_\_  
J. EDWARD TEWES, City Manager

Attest:

\_\_\_\_\_  
IRMA TORREZ, City Clerk

PROPERTY OWNER(S)

\_\_\_\_\_  
\_\_\_\_\_

**(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY,  
MUST BE ACKNOWLEDGED BY A NOTARY)**

**EXHIBIT "A"**

**DEVELOPMENT ALLOTMENT EVALUATION**

**MP-02-07**

(See Entire Documents on File in the  
Community Development Department - City Hall)  
CITY OF MORGAN HILL

**EXHIBIT "B"**

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**DEVELOPMENT SCHEDULE MP-02-07: CORY – SAN PEDRO PARTNERS  
FY 2004-05 (9 units), FY 2005-06 (7 units), FY 2006-07 (8 units)**

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<b>I. SUBDIVISION AND ZONING APPLICATIONS</b>	
Applications Filed:	October 2, 2003
<b>II. SITE REVIEW APPLICATION</b>	
Application Filed:	October 2, 2003
<b>III. FINAL MAP SUBMITTAL</b>	
Map, Improvements Agreement and Bonds:	March 31, 2004
<b>IV. BUILDING PERMIT SUBMITTAL</b>	
Submit plans to Building Division for plan check:	
FY 2004-05 (9 units)	June 30, 2004
FY 2005-06 (7 units)	June 30, 2005
FY 2006-07 (8 units)	June 30, 2006
<b>V. BUILDING PERMITS</b>	
Obtain Building Permits:	
FY 2004-05 (9 units)	September 30, 2004
FY 2005-06 (7 units)	September 30, 2005
FY 2006-07 (8 units)	September 30, 2006
Commence Construction:	
FY 2004-05 (9 units)	June 30, 2005
FY 2005-06 (7 units)	June 30, 2006
FY 2006-07 (8 units)	June 30, 2007

Failure to obtain building permits and commence construction by the dates listed above, shall result in the loss of building allocations. Submitting a Final Map Application or a Building Permit six (6) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least 12 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.



**CITY OF MORGAN HILL  
SPECIAL CITY COUNCIL MEETING  
MINUTES – FEBRUARY 20, 2004**

**CALL TO ORDER**

Mayor Pro Tempore Sellers called the special meeting to order at 1:05 p.m.

**ROLL CALL ATTENDANCE**

Present: Council Members Chang, Sellers, Tate  
Absent: Council Member Carr and Mayor Kennedy

**DECLARATION OF POSTING OF AGENDA**

The meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

**PUBLIC COMMENT**

Mayor Pro Tempore Sellers opened the floor to items not appearing on this afternoon's agenda. No comments were offered.

***City Council Action***

**1. MEDICAL SERVICES OBJECTIVES**

The Council briefly discussed medical services.

**Action: No Action Taken**

**ADJOURNMENT**

Mayor Pro Tempore Sellers adjourned the meeting at 1:15 p.m.

**MINUTES PREPARED BY:**

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**IRMA TORREZ, CITY CLERK**



**REDEVELOPMENT AGENCY**  
***STAFF REPORT***

***MEETING DATE:*** *March 3, 2004*

**JANUARY 2004 FINANCE & INVESTMENT REPORT**

**RECOMMENDED ACTION:**

Accept and File Report

**EXECUTIVE SUMMARY:** Attached is the monthly Finance and Investment Report of the Redevelopment Agency of the City of Morgan Hill for the month of January 2004. The report covers activity for the first seven months of the 2003/2004 fiscal year. A summary of the report is included on the first page for the Board's benefit.

The Redevelopment Agency monthly Finance and Investment Report is presented to the Agency Board and our Citizens as part of our ongoing commitment to improve and maintain public trust through communication of our finances, budget and investments. The report also serves to provide the information necessary to determine the adequacy/stability of financial projections and develop equitable resource/revenue allocation procedures.

This report covers all fiscal activity of the Redevelopment Agency.

**FISCAL IMPACT:** As presented.

**Agenda Item # 10**

**Prepared By:**

**Finance Director**

**Submitted By:**

**Executive director**

**REDEVELOPMENT AGENCY OF  
THE CITY OF MORGAN HILL**

**Monthly Financial and Investment Reports**

**January 31, 2004 – 58% Year Complete**



**CITY OF MORGAN HILL  
REDEVELOPMENT AGENCY**

**Prepared by:**

**FINANCE DEPARTMENT**



**REDEVELOPMENT AGENCY OF THE CITY OF MORGAN HILL, CALIFORNIA**  
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2003/04  
FOR THE MONTH OF JANUARY 2004 - 58% OF YEAR COMPLETE

**Revenues**

Through January 31, the Redevelopment Agency received \$9,488,880 in property tax increment revenues. Most property tax increment revenues are received between December and April. The Redevelopment Agency, as of January 31, 2004, has collected \$100,000,000 in tax increment revenue under the original plan and has collected \$65,513,101, net of pass-through obligations to other agencies, toward the plan amendment cap of \$147,000,000. Since the \$100 million tax increment cap for the original plan was reached during 1999/2000, all tax increment revenues collected during 2003/2004 were collected under the plan amendment.

An amount of \$195,427 in interest earnings has been received through December. Additional interest earnings earned for the month of January have not been included and will be posted in April as part of earnings for the quarter ending March 2004. Other revenues represent charges for services and total \$21,983.

**Expenditures**

Total Redevelopment Agency Capital Projects expenditures and encumbrances equaled \$25,588,625 and were 64% of budget. Of this total, \$8,461,815 represented encumbrances for capital projects and other commitments. If the encumbrances were excluded, the RDA would have spent only 43% of the budget. Expenditures for administrative costs for employee services, supplies, and contract services were 49% of budget. During July, the Agency made a \$2.55 million installment payment towards the purchase of the Sports Complex property. During July, the Agency also spent approximately \$3.5 million for the purchase of the Courthouse Facility property. Through January, the Agency has incurred \$4.3 million in acquisition and construction costs related to the Butterfield Blvd. Phase IV Project and has incurred \$4.6 million in costs associated with the construction of the Aquatics Complex. All Capital Projects expenditures during 2003/04 have used monies collected under the plan amendment.

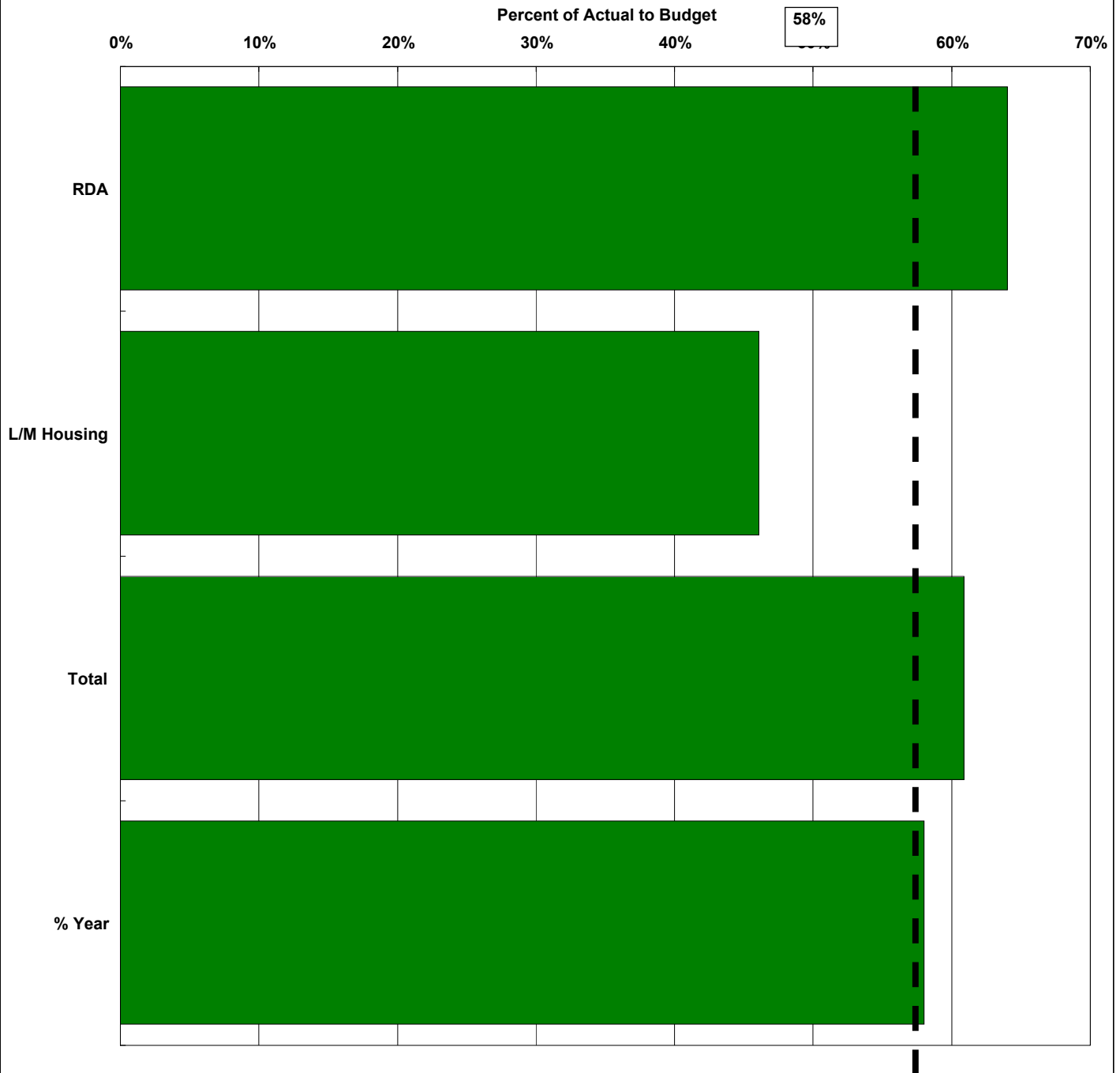
Budgeted expenditures plus encumbrances for Housing were at 46% of the budget for a total of \$3,936,062. During July, the Agency paid approximately \$3 million for the purchase of the Royal Court Apartments. Although certain loans and grants for various housing loan and grant programs have been committed, the related funds have not been drawn down by the recipients and, hence, are not reflected in the expenditures. All of the 2003/04 housing related expenditures has been funded with tax increment collected under the plan amendment.

**Fund Balance**

The unreserved fund balance of \$437,775 for the Capital Projects Fund at January 31, 2004, reflected the large amount of current contract encumbrances, not yet expended, and consisted entirely of monies collected under the plan amendment. The unreserved fund balance included future obligations to pay an additional \$3.6 million for the Courthouse Facility, an additional \$3,250,000 for purchase of the Gunderson property, and \$1.61 million for the Lomanto property should the Agency agree to execute its option to purchase in accordance with the agreement. If all these future commitments were subtracted from the \$437,775, the remaining unreserved fund balance at January 31 would be a negative (\$8,022,225). However, these commitments are expected to be paid out over the next 2 to 3 years. Staff will bring a short-term borrowing plan to the Board in the near future to finance the 2003/04 cash flow needs, as provided for in the current 2003/04 budget. The Capital Projects Fund cash balance at January 31 was \$8,916,570.

The unreserved fund balance of \$4,589,164 for the Housing Fund at January 31 consisted of funds all collected under the plan amendment.

# Redevelopment Agency YTD Expenditures



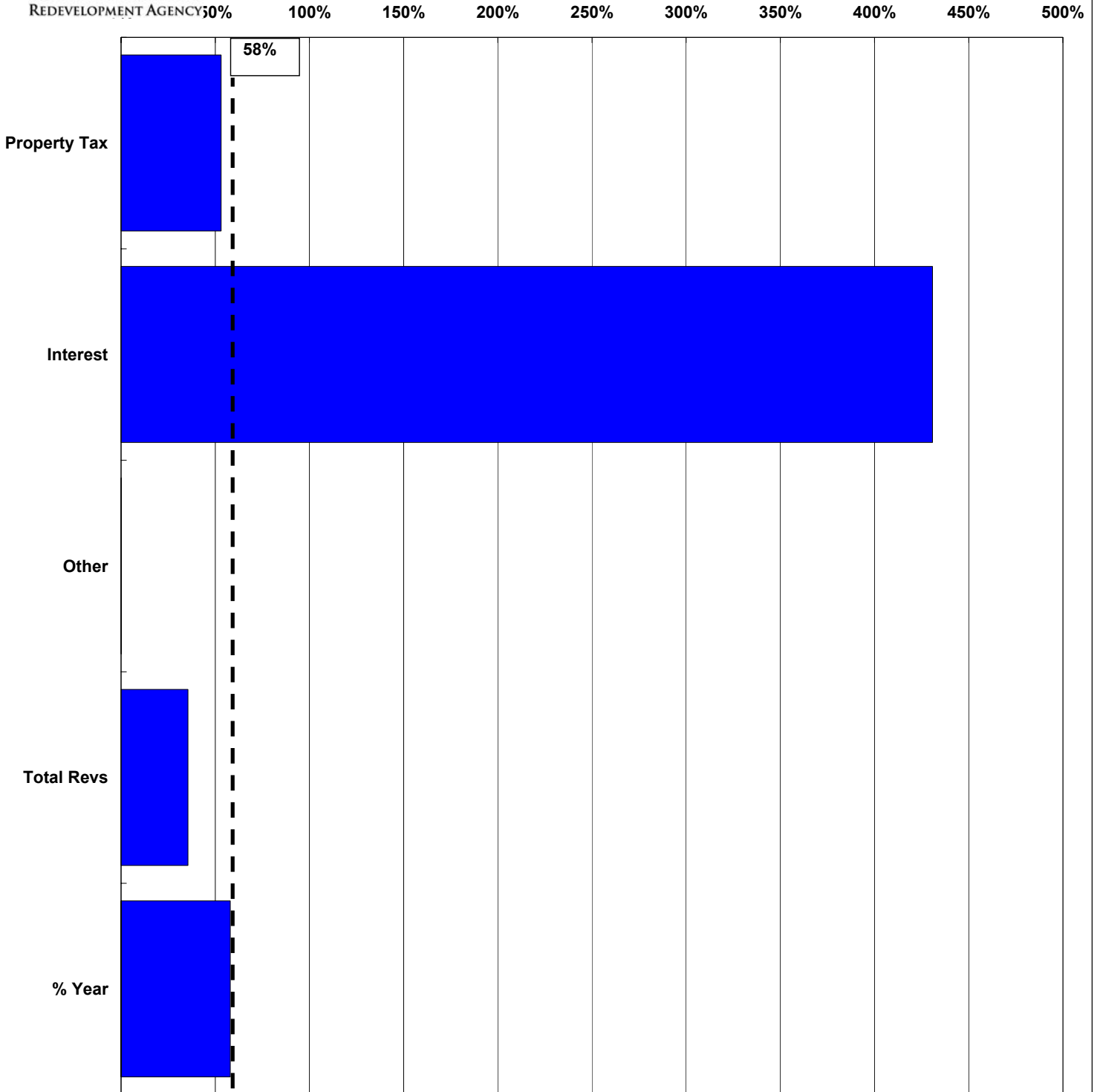
Expenditure Category	Budget	Actual Plus Encumbrances	% of Budget
CAPITAL PROJECTS	\$39,964,615	\$25,588,625	64%
HOUSING	8,538,767	3,936,062	46%
TOTALS	\$48,503,382	\$29,524,687	61%



CITY OF MORGAN HILL  
REDEVELOPMENT AGENCY

# Redevelopment Agency YTD Revenues

Percent of Actual to Budget



REVENUE CATEGORY	BUDGET	ACTUAL	% OF BUDGET	PRIOR YEAR TO DATE	% CHANGE FROM PRIOR YEAR
PROPERTY TAXES	\$17,877,658	\$9,488,880	53%	\$10,000,376	-5%
INTEREST INCOME/RENTS	\$45,364	\$195,427	431%	\$282,020	-31%
OTHER REVENUE	\$23,536,663	\$21,983	0%	\$17,150	28%
TOTALS	\$27,373,112	\$9,706,290	36%	\$10,299,546	-6%



Redevelopment Agency  
 Fund Balance Report - Fiscal Year 2003/04  
 For the Month of January 2004  
 58% of Year Complete

Fund No.	Fund	Fund Balance 06-30-03	Revenues		Expenditures		Year to-Date Deficit or Carryover	Ending Fund Balance		Cash and Investments	
			YTD Actual	% of Budget	YTD Actual	% of Budget		Reserved <sup>1</sup>	Unreserved	Unrestricted	Restricted
317	CAPITAL PROJECTS	\$20,860,548	7,436,981	32%	17,126,810	43%	(9,689,829)	10,732,944	437,775	8,916,570	
327/328	HOUSING	\$24,240,428	2,269,309	59%	3,856,589	45%	(1,587,280)	18,063,983	\$4,589,164	4,674,187	
<b>TOTAL CAPITAL PROJECT FUNDS</b>		<b>\$45,100,976</b>	<b>9,706,290</b>	<b>35%</b>	<b>20,983,399</b>	<b>43%</b>	<b>(11,277,109)</b>	<b>28,796,927</b>	<b>5,026,939</b>	<b>13,590,757</b>	
<b>SUMMARY BY FUND TYPE</b>											
	CAPITAL PROJECTS GROUP	\$45,100,976	9,706,290	35%	20,983,399	43%	(11,277,109)	28,796,927	5,026,939	13,590,757	
<b>TOTAL ALL GROUPS</b>		<b>\$45,100,976</b>	<b>9,706,290</b>	<b>35%</b>	<b>20,983,399</b>	<b>43%</b>	<b>(11,277,109)</b>	<b>28,796,927</b>	<b>5,026,939</b>	<b>13,590,757</b>	
<b>TOTAL CASH AND INVESTMENTS</b>										<b>13,590,757</b>	

<sup>1</sup> Amount reserved for encumbrances, fixed asset replacement, long-term receivables



**Redevelopment Agency**  
**Year to Date Revenues - Fiscal Year 2003/04**  
**For the Month of January 2004**  
**58% of Year Complete**

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGETED	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCREASE (DECREASE) FROM PRIOR YTD	% CHANGE
<b>CAPITAL PROJECTS FUNDS</b>							
<b>317 CAPITAL PROJECTS</b>							
Property Taxes & Supplemental Roll	14,086,573	14,086,573	7,293,265	52%	7,865,761	(572,496)	-7%
Development Agreements				n/a	-	-	n/a
Interest Income, Rents			122,746	n/a	206,331	(83,585)	-41%
Other Agencies/Current Charges	<u>9,450,000</u>	<u>23,536,573</u>	<u>20,970</u>	<u>0%</u>	<u>16,550</u>	<u>4,420</u>	<u>27%</u>
<b>TOTAL CAPITAL PROJECTS</b>	<b><u>23,536,573</u></b>	<b><u>23,536,573</u></b>	<b><u>7,436,981</u></b>	<b><u>32%</u></b>	<b><u>8,088,642</u></b>	<b><u>(651,661)</u></b>	<b><u>-8%</u></b>
<b>327/328 HOUSING</b>							
Property Taxes & Supplemental Roll	3,791,085	3,791,085	2,195,615	58%	2,134,615	61,000	3%
Interest Income, Rent	45,364	45,364	72,681	160%	75,689	(3,008)	-4%
Other	<u>90</u>	<u>90</u>	<u>1,013</u>	<u>1126%</u>	<u>600</u>	<u>413</u>	<u>69%</u>
<b>TOTAL HOUSING</b>	<b><u>3,836,539</u></b>	<b><u>3,836,539</u></b>	<b><u>2,269,309</u></b>	<b><u>59%</u></b>	<b><u>2,210,904</u></b>	<b><u>58,405</u></b>	<b><u>3%</u></b>
<b>TOTAL CAPITAL PROJECTS FUNDS</b>	<b>27,373,112</b>	<b>27,373,112</b>	<b>9,706,290</b>	<b>35%</b>	<b>10,299,546</b>	<b>(593,256)</b>	<b>-6%</b>





**Redevelopment Agency**  
**Year to Date Expenditures - Fiscal Year 2003/04**  
**For the Month of January 2004**  
**58% of Year Complete**

FUND NO.	FUND/ACTIVITY	THIS MONTH ACTUAL EXPENDITURES	ADOPTED BUDGET	AMENDED BUDGET	YTD EXPENDITURES	OUTSTANDING ENCUMBRANCES	TOTAL ALLOCATED	% OF TOTAL TO BUDGET
317 CAPITAL PROJECTS								
	BAHS Administration	105,084	1,509,317	1,598,923	725,003	51,202	776,205	49%
	BAHS Economic Development	52,474	4,516,120	8,204,443	3,589,096	155,987	3,745,083	46%
	BAHS CIP	<u>2,046,238</u>	<u>21,320,714</u>	<u>30,161,249</u>	<u>12,812,711</u>	<u>8,254,626</u>	<u>21,067,337</u>	<u>70%</u>
	<b>TOTAL CAPITAL PROJECTS</b>	<b><u>2,203,796</u></b>	<b><u>27,346,151</u></b>	<b><u>39,964,615</u></b>	<b><u>17,126,810</u></b>	<b><u>8,461,815</u></b>	<b><u>25,588,625</u></b>	<b><u>64%</u></b>
327 AND 328 HOUSING								
	Housing	<u>173,556</u>	<u>4,592,332</u>	<u>8,538,767</u>	<u>3,856,589</u>	<u>79,473</u>	<u>3,936,062</u>	<u>46%</u>
	<b>TOTAL HOUSING</b>	<b><u>173,556</u></b>	<b><u>4,592,332</u></b>	<b><u>8,538,767</u></b>	<b><u>3,856,589</u></b>	<b><u>79,473</u></b>	<b><u>3,936,062</u></b>	<b><u>46%</u></b>
	<b>TOTAL CAPITAL PROJECT FUND</b>	<b><u>2,377,352</u></b>	<b><u>31,938,483</u></b>	<b><u>48,503,382</u></b>	<b><u>20,983,399</u></b>	<b><u>8,541,288</u></b>	<b><u>29,524,687</u></b>	<b><u>61%</u></b>



**Redevelopment Agency of the City of Morgan Hill**  
**Balance Sheet Report - Fiscal Year 2003/04**  
**For the Month of January 2004**  
**58% of Year Complete**

	<b>CAPITAL PROJECTS (Fund 317)</b>	<b>Housing (Fund 327/328)</b>
<b>ASSETS</b>		
Cash and investments:		
Unrestricted	8,916,570	4,674,187
Accounts Receivable	3,200	7,806
Loans and Notes Receivable <sup>1</sup>	3,343,914	24,270,764
Advance to Other Funds		
Fixed Assets <sup>2</sup>	71,049	
Other Assets		
<b>Total Assets</b>	<b>12,334,733</b>	<b>28,952,757</b>
<b>LIABILITIES</b>		
Accounts Payable and Accrued Liabilities	20,180	13,354
Deferred Revenue <sup>3</sup>	1,143,834	6,286,255
Accrued Vacation and Comp Time		
<b>Total liabilities</b>	<b>1,164,014</b>	<b>6,299,609</b>
<b>FUND BALANCE</b>		
Fund Balance		
Reserved for:		
Encumbrances	8,461,815	79,473
Advance to Other Funds		
Properties Held for Resale	71,049	
Loans and Notes Receivable	2,200,080	17,984,510
<b>Total Reserved Fund balance</b>	<b>10,732,944</b>	<b>18,063,983</b>
Unreserved Fund Balance	437,775	4,589,165
<b>Total Fund Balance</b>	<b>11,170,719</b>	<b>22,653,148</b>
<b>Total Liabilities and Fund Balance</b>	<b>12,334,733</b>	<b>28,952,757</b>

<sup>1</sup> Includes Housing Rehab loans and loans for several housing and Agency projects.

<sup>2</sup> Includes RDA properties held for resale.

<sup>3</sup> Includes the deferred payment portion of the loans noted above.

**CITY OF MORGAN HILL  
JOINT SPECIAL AND REGULAR CITY COUNCIL,  
SPECIAL REDEVELOPMENT AGENCY,  
AND MORGAN HILL FINANCING AUTHORITY MEETING  
MINUTES – FEBRUARY 18, 2004**

**CALL TO ORDER**

Mayor/Chairman/President Kennedy called the special meeting to order at 5:03 p.m.

**ROLL CALL ATTENDANCE**

Present: Council/Agency/Commission Members Carr, Sellers, and Mayor/Chairman/President Kennedy  
Late: Council/Agency/Commissioner Members Chang (arrived at 5:10 p.m.) and Tate (arrived at 5:10 p.m.)

**DECLARATION OF POSTING OF AGENDA**

City Clerk/Agency Secretary/Commission Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

***City Council and Redevelopment Agency Action***

**CLOSED SESSIONS:**

City Attorney/Agency Counsel Leichter announced the below listed closed session items. She indicated that one of the anticipated litigation matters is attributable to a letter from Stephen Cohn dated December 5, 2003 threatening litigation.

**1.**

**CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Authority: Government Code Sections 54956.9(b) & (c)  
Number of Potential Cases: 4

**2.**

**CONFERENCE WITH LABOR NEGOTIATOR:**

Legal Authority: Government Code Section 54957.6  
Agency Negotiators: City Manager; City Attorney; Human Resources Director

Employee Organizations: AFSCME Local 101  
Morgan Hill Community Service Officers Association  
Morgan Hill Police Officers Association

Unrepresented Employees: Custodian/Building Maintenance Worker  
Government Access Technician  
Maintenance Worker Assistant  
Utility Worker Assistant

Executive Management Group 1-A

Chief of Police  
Director of Business Assistance & Housing Services  
Director of Community Development  
Director of Finance  
Director of Public Works/City Engineer  
Human Resources Director  
Recreation and Community Services Manager  
Assistant to the city Manager  
Council Services and Records Manager

Middle Management Group 1-B

Police Lieutenant  
Deputy Director of Public Works  
Assistant City Attorney  
Assistant Director of Finance  
Chief Building Official  
Human Resources Supervisor  
Planning Manager  
Senior Civil Engineer  
Senior Project Manager/Community Buildings  
Budget Manager  
Business Assistance and Housing Services Manager  
Police Support Services Supervisor  
Senior Planner  
Project Manager  
Utility Systems Manager  
Recreation Supervisor  
Secretary to the City Manager

Confidential Non-Exempt Employees Group 1-C

Administrative Analyst  
Secretary to the City Attorney  
Accounting Technician  
Human Resources Assistant

3.

**PUBLIC EMPLOYEE PERFORMANCE EVALUATION**

Legal Authority: Government Code 54957  
Public Employee Performance Evaluation: City Manager  
Attendees: City Council, City Manager

4.

**CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

Legal Authority: Government Code section 54956.9(a)  
Case Name: Hacienda Valley Mobile Estates v. City of Morgan Hill  
Case Number: Santa Clara County Superior, Case No. CV 80-7708

5.

**CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

Legal Authority: Government Code Section 54965.9(a)  
Case Name: Morgan Hill Unified School District v. Minter & Fahy  
Case No.: Santa Clara County Superior Court, No. CV 772368

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Attendees: City Council, City Manager, City Attorney, Mark Strombotne,  
Special Counsel

**6.**

**CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

Legal Authority: Government Code section 54956.9(a)  
Case Name: Allivato v. City of Morgan Hill et al.  
Case Number: Santa Clara County Superior CV 810111  
Attendees: City Attorney, City Manager

**OPPORTUNITY FOR PUBLIC COMMENT**

Mayor/Chairman/President Kennedy opened the Closed Session items to public comment. No comments were offered.

**ADJOURN TO CLOSED SESSION**

Mayor/Chairman/President Kennedy adjourned the meeting to Closed Session at 5:05 p.m.

**RECONVENE**

Mayor/Chairman/President Kennedy reconvened the meeting at 6:00 p.m.

**CLOSED SESSION ANNOUNCEMENT**

City Attorney/Agency/Commission Counsel Leichter announced that no reportable action was taken in closed session.

***City Council and Parks & Recreation Commission Action***

Mayor Kennedy and Chairman Frederick called the joint meeting of the City Council and Parks and Recreation Commission to order.

Present: Commissioners Frederick, Kenney, Jensen, Leibers, and Page

Absent: Commissioners Hagiperos and van Keulen

**WORKSHOP:**

**1. AGENDA ITEMS FOR JOINT COUNCIL AND PARKS AND RECREATION COMMISSION (PRC) WORKSHOP**

Chairman Frederick indicated that he met with Recreation and Community Services Manager Spier to review a PRC workplan for 2004. One of the items he felt would be important is to hold a joint workshop with the City Council. He stated that he met with Mayor Kennedy to discuss communication

issues and some of the work that the PRC has been doing over the past few years such as the indoor recreation center (IRC). The PRC has been moving items forward to the City Council and that there is perceived disconnect with agenda items before the Council for consideration and that the PRC was not informed as to what was being agendaized and discussed. He felt that it would be a good idea to meet in joint session with the Council at least once a year in order to talk about vision and goals of the Council as they relate to parks and recreation in Morgan Hill. He indicated that the PRC would like to know what the Council would like it to work toward this year. Toward this end, he put together suggested agenda topics that have been reviewed by Mayor Kennedy. He informed the Council that the PRC members reviewed these items last night at its meeting. He indicated that the PRC would like to discuss ideas for the PRC next year as well as to discuss the issues associated with RDA funding allocations as they relate to parks & recreation and other items such as the library, including project priorities.

Mayor Kennedy stated that in his meeting with Chairman Frederick, it became clear that communication problems had occurred. He indicated that the PRC felt that they had clear direction, particularly related to the Parks Master Plan and that the Council may have gone in a different direction. Discussed was taking actions to ensure that both bodies are working together and communicating jointly on goals and objectives, especially in the areas of changes. He said that the Council/Redevelopment may have changed direction without communicating back to the PRC as to the reason for a change in direction. He felt that it was important that there be better communication and that joint meetings be held to make sure that everyone is clear on roles and goals.

Chairman Frederick indicated that the PRC has two projects it is working on that are RDA funded: the IRC and the outdoor sports complex. He stated that the PRC is about to embark on looking at interim uses for the outdoor sports complex. He said that the PRC understands that there is limited RDA funding and that there are other projects that the Council/Redevelopment Agency needs to consider. He said that the PRC wants to get a sense of where the Council/Redevelopment Agency is heading with regards to funding allocations. He stated that the PRC has been working on the IRC for several years and that they have gone through a thorough process in looking at putting together a program that would provide a full cost recovery facility. He stated that the PRC has worked extensively with its subcommittees (e.g., youth and senior advisory committees). Everyone believes that a good program has been put together. He said that the IRC is a facility lacking in the community. He stated that the PRC understands that there are issues with the library in that it is under funded because state funding is not forthcoming. He felt that the City already has a library and that the PRC would like to move forward with the IRC.

Mayor Kennedy said that at a recent Council meeting, funding for the IRC project was raised. It was his recollection that at least 3 council members continue to favor moving forward with the IRC: himself and Council members Chang and Sellers.

Council Member Carr stated his appreciation for the work that has been put forth by the PRC. He stated that he supports the idea of an IRC/intergenerational center. He stated that his concern is about funding. He has continued to state that the Council needs to continue to look at RDA dollars and where they are

going as a project may not be funded. He felt that projects should be based upon the community's priorities, how the Council perceives these priorities, and how they are set. He has argued that the Council/Redevelopment Agency should be relooking at the allocations of these dollars every year because there will be a project at the bottom of the list that will not get funded. He has stated that he does not want to spend more money on the development of the IRC until the City figures out a plan for the library. He said that the work that is taking place is being done with dollars that have already been allocated and that the City is entering into a phase where the City is not spending more money on that project. He said that he was comfortable with where the City is with the IRC and how it is moving forward because he does not want to get behind the timeline. However, the City may come to a time where the Council/Redevelopment Agency has to decide where the dollars are being spent. He did not want to get to a time where there is argument that the City already spent too much on a project that it has to move forward whether it is a priority project or not. He stated that this is the position that he has taken on funding as the City tries to figure out how it will build the library. He noted that it has been argued many times at meetings that the Council/Redevelopment Agency needs to figure out how to move forward with both the IRC and the library. He stated that he does not want to continue to spend money on something that is not the direction that the Council/Redevelopment Agency has stated that it would follow.

Council Member Tate agreed that the community already has a library but that a new library is needed. He felt that the PRC has done a wonderful job on the multi generational IRC. He stated that he sat in on both the youth and the senior advisory committees when there was discussion about the design of spaces to make sure that they work well together. He said that the heart of the multi generational center is one that needs to be completed. He said that the City committed, with the expansion of the RDA, to construct recreation facilities as well as a library. He indicated that the City promised to build a youth and senior center. He stated that he looked at recreational needs but that he does not see a need for an indoor swimming pool or a "Gold's Gym." He did not understand this being a higher priority than playing fields and other recreational needs. He indicated that he will be presenting an update on the status of the library subcommittee. He stated that the library subcommittee is looking at a June 2004 date to make a recommendation on how the City will move forward with the library. The library subcommittee will be requesting work sessions with the Council because there are no obvious ways to close the funding gap for the library.

Council Member Sellers agreed that the PRC and the Council have a need for better communication. The concept that the PRC has developed and continues to articulate is sound and worthy of progress. He felt that it is important to find a way for the PRC to articulate their recommendations to the Council. He stated that he was a strong supporter of a multi generational center. He said that the biggest challenge the Council faces is working in a vacuum. He said that there are valid concerns in the community for the need of a new library. He recommended that the PRC continue to be involved in the process, checking in with the Council and communicate back to the Council as this information is helpful to the Council in making decisions. He noted that there are subcommittees of the PRC and that this adds another layer in which to communicate. Regarding this issue, he felt that the Council has to figure out a way to continue communicating with the PRC. He said that he would also like to discuss the outdoor

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recreation center as funding will be needed for the outdoor sports complex, noting that the Council has not discussed this issue to date.

Vice-chair Kenney felt that the Council has done a great job in speeding up actions. He indicated that the PRC has worked on 5-6 projects within the last three years and that it was able to make decisions on all projects. He stated that any delay of any project would cost more. He noted that there has been an increase in project cost associated with the IRC because prices change all the time. He felt that the schedule set for the IRC is working. He recommended that the Council complete the projects started and deal with the library as a separate issue. He agreed that the library is an important issue. However, just because state funding was lost, the Council/Redevelopment Agency should not go to all the other projects and start scavenging money as it will close down every project. He felt that the community would like the City to get projects completed. In moving forward with the projects, the City will be able to save millions of dollars that can be used for the library, when funding can be found for it.

Council Member Tate reiterated that the review of the library schedule is set for June 2004. He noted that the City is going through a dormant period while the design of IRC is being finalized and that the project's schedule is not being impacted. He felt that the Council has designed a strategy as being suggested by Vice-chair Kenney.

Vice-chairman Kenney informed the Council that the PRC makes recommendations regarding the IRC only to hear back from the Council that it is heading in a different direction. At this point, the PRC felt that the Council is not considering its recommendations. This built up to other issues. He felt that the key issue is to keep the projects rolling, indicating that individuals in the community are happy with what the City has been doing, including providing services to the youth.

Council Member Chang stated that staffing and maintenance of City projects will be an issue to be addressed.

Vice-chair Kenney noted that the City will be establishing user fees for the IRC, creating a fee system so that recreation facilities are collecting fees to pay for staffing and maintenance.

Commissioner Jensen stated that his biggest concern is maintenance of facilities as it is the first to get pulled when there is a budget shortfall. He felt that there were two ways to save money and image to the city as a whole. He recommended that funding for maintenance be placed into a separate account such as a parks maintenance account. He said that projects go through an extensive design review. If you look at any redevelopment project that has been built that is only a year old, he can show the Council items that have already changed because of maintenance problems. He felt that if a design is reviewed appropriately for the maintenance up front, the city would not be spending money installing items if they are not to be maintained. He recommended that the City take a harder view of a project from a maintenance standpoint. He noted that the City is facing challenges at the Community Center with fountains and other elements, noting that it is a brand new facility and that there are no answers why these elements are already defective.



Commissioner Librers stated that she works with the YAC, indicating that they have spent a lot of time building, conceptually, what they want in the IRC. She felt that it will be a well used center, noting that there is no place for youth of the community to go. She felt that it was important to weigh recreation equally when the City makes hard decisions regarding funding.

Commissioner Page said that he has been a part of the PRC since it was reinstated. He felt that the PRC's role is to give Council advice. He said that the PRC needs to understand that there will be times the Council will accept the PRC's advice and other times when it will not. He felt that any misunderstanding or misinterpretations can be addressed early on with good communication. He said that PRC members advocate for parks and recreation activities and try to do what is right by the majority of the community. He said that he would like to know what is left in the RDA budget so that he can respond to questions raised by the community as to the funding that is available for the various recreational projects. He stated that he would support the Council's project list but that he would like to know what is left in the budget so that when he reviews items, he can make informed decisions.

Mayor Kennedy stated that staff can forward information presented to the Council regarding the RDA budget priorities to the PRC.

Commissioner Page said that an issue that comes up at the PRC meetings is the incorporation of operation and maintenance into its recommendation to the Council. He stated that the PRC feels strongly about the multi generational center because it feels that it has a good cost recovery model. He said that of all the projects that it has reviewed and advised the Council on, the multi generational center is the one that has the best chance for cost recovery.

Mayor Pro Tempore Sellers agreed that the multi generational facility is needed in the community. He noted that there is vacant land sitting awaiting the construction of an outdoor sports facility. He indicated that the Council set aside \$2 million in funding for this project. Money has been set aside for the CYSA project that they are trying to construct. The stated that is specific recreational funding that has not been allocated to date. He felt that it would be helpful to receive PRC input on how the funding should be allocated.

Chairman Frederick indicated that a meeting was held in January 2004 and that stakeholders for organized sports throughout the city were invited to discuss interim uses of the playfields. He expressed concern that if this money is on the table for reallocation, it would not be prudent to work with these groups if this money may be taken away and used elsewhere. He felt that there would be a lot of resentment in the community if expectations are set only to have funding taken away. He indicated that the PRC would have its own priorities as they relate to parks and recreational activities.

City Manager Tewes felt that there may be some misunderstanding about how the outdoor sports field project is funded. He indicated that the project has an RDA allocation for land purchase only. He stated that based on a PRC recommendation last year, the Council appropriated \$2.7 million of park development funds for the development of the outdoor sports fields. Also, on the recommendation of PRC, the Council adopted a new fee so that future growth will pay its fair share of the outdoor sports

fields. He stated that there was a need to increase the budget for the aquatics center and that the Council asked for the opinion of the PRC. The PRC addressed this issue and recommended that the Council use funds that had been previously allocated to the outdoor sports fields be re-allocated to the aquatics center, providing that the parks development funds replaced these funds. He noted that the Council supported the PRC recommendation and that it is contained within the adopted budget. He did not know how much funds are being accumulated in the parks development funds at this time.

Council Member Chang inquired whether the \$2.7 contained in the park development fund can be used for the IRC.

City Manager Tewes said that these funds can be used only to the extent that it will be used for the outdoor park aspect of the IRC project and not the indoor recreation component.

Commissioner Page acknowledged that the information about funding is contained within the budget document. He said that it was his assumption that funding allocations may have changed but that it does not appear that they have. He noted that the IRC has had a budget for some time and that as long as the project stays within its budget, the project can move forward. He felt that as long as there is funding set aside for the library, the library can also move forward.

Mayor Kennedy and Council Member Tate indicated that the City is short in library funding.

Council Member Carr agreed that there is some funding for the library and that additional funding is needed. It was the City's hope that additional funding would come from the State. The City is now in a position where it needs additional dollars to move forward with the library. He said that most of the Council members are not counting on the State for library funding so there needs to be discussion about where these dollars will come from. He said that the Council receives advice from all of its boards and commissions. However, flexibility needs to be understood and maintained. He stated that everyone would like to allocate more money to the outdoor fields, the library and a multi generational center. The question is how to keep enough flexibility to complete these projects. He said that he does not want to lock the City into anything that does not allow flexibility. He stated that he understands the concern about setting expectations with user groups that are in conflict; however, he felt that the preliminary work that is taking place is very important. He said that when the CYSA lease comes up at the end of the year, the City needs to be ready with what should take place with the fields or the City will be in a bad situation if the grounds are allowed to go fallow.

Mayor Kennedy indicated that the Council has asked the City Manager to take a look at the way the Council approaches the formation of committees, ad hoc committees, etc. He indicated that the City Manager will be returning to the Council with a recommendation. Therefore, he did not know whether much time should be spent on this issue other than accepting PRC input that it would like to provide going into this process.

City Manager Tewes indicated that it is his intent to visit with each commission in a formal way to request their participation on this issue.

Mayor Pro Tempore Sellers addressed the sports fields, stating that the City needs to know what the \$2.7 million will give the City. He agreed that there are successful/active independent organizations within the community. He felt that there may be opportunities to partner with groups that use the fields such as the Pony Baseball and the soccer leagues. He appreciated that the PRC took the time to study all possibilities. He felt that the City needs to study how best to use the \$2.7 million for the sports fields and how we can get the most out of this for the youth and the community.

Vice-chairman Kenney said that rather than building a huge parking lot with lousy fields that the City builds what is needed from the aquatics center out. When additional funding becomes available, the remainder of the sports field can be built out.

Chairman Frederick said that at the first initial meeting with the user groups held in January, there was a lot of enthusiasm in the community and that there were a lot of needs. He indicated that user groups support dedicated fields. He indicated that the sports field configuration was the most space efficient design that was derived and that it does require shared use. He inquired whether the Council supported the PRC continuing to work with the user groups toward an interim use.

Mayor Kennedy noted that the PRC has heard that the Council wants it to continue its discussions with the user groups relating to the outdoor sports field. He noted that the Council has a subcommittee who is meeting with the School District on partnerships.

Council Member Carr informed the PRC that the Council communicates with the School District in two ways: 1) a standing City-School Liaison Committee and 2) an ad hoc committee who will be talking about joint facility planning. He said that it is in this respect that the Council has talked about the field uses. He stated that the School District is going through a similar process where they are bringing in user groups and talking about the use of their fields, including the best way of doing so. He stated that the Council subcommittee has been urging the School District Board Members to follow what the PRC has been doing. The Council subcommittee has also been speaking with the School District about the needs of a library and possible partnerships associated with the library. He indicated that he and Council Member Tate have met with Chairman Frederick to talk about the condition of the school fields and that they tried to raise these concerns with the School District as well.

Chairman Frederick said that this may not be the best time to approach the School District as times are hard for them and that they are going through difficult challenges at this time. He said that it is apparent that the City and the School District need to pool resources in order to meet the demands of the sports leagues; working toward making the fields safer.

Council Member Tate said that this is a dual edge sword as the School District is not in the recreation business but are in the educational business. He said that the City is in the recreation business and yet the City needs the School District's fields to supply recreational opportunities. He felt that there is a delicate balance on partnering with groups when nobody has any money.

Commissioner Page felt that it will be a challenge to create a partnership with the School District as they have not been a predictable/reliable partner.

Mayor Kennedy stated that one goal/vision that the Council would like to see accomplished is the outdoor sports complex. It was his belief that the Council was in agreement that the PRC should keep its focus on this goal.

Mayor Pro Tempore Sellers requested that the PRC keep the Council informed and forward their thoughts on the IRC process.

Chairman Frederick stated his appreciation of this forum and that it was his hope that a similar workshop can be held again next year. He suggested that this forum would be appropriate at the time that the Council appoints new commissioners in order to give them an opportunity to meet the Council and understand what their charge will be at the beginning of their term.

Mayor Kennedy agreed that this forum has been helpful. He stated that the Council will try to keep everyone informed, keeping communication lines open. He thanked the PRC for all of its hard work.

#### **ADJOURN SPECIAL JOINT MEETING OF THE CITY COUNCIL AND PARKS & RECREATION COMMISSION**

Mayor Kennedy and Chairman Frederick adjourned the joint meeting of the City Council and Parks and Recreation Commission at 6:56 p.m.

#### **RECONVENE JOINT CITY COUNCIL/REDEVELOPMENT AGENCY MEETING**

Mayor/Chairman/President Kennedy reconvened the meeting at 7:03 p.m. and announced that the Council/Agency held closed sessions earlier this evening and that the Council just concluded a joint workshop with the Parks and Recreation Commission.

#### **SILENT INVOCATION**

#### **PLEDGE OF ALLEGIANCE**

At the invitation of Mayor/Chairman/President Kennedy, Interim Chief of Police Bruce Cummings led the Pledge of Allegiance.

#### **INTRODUCTIONS**

City Manager Tewes introduced the Interim Police Chief Bruce Cumming.

#### **CITY COUNCIL REPORT**

Council Member Carr reported on the City-School Liaison Committee. He stated that Interim Chief of Police Cumming attended the last meeting as policing issues at the schools are always ones that the City wants to be available to talk about. He indicated that the School District had high praise with the contact that they have had with Chief Cumming and the response they receive from the police department over the years at well. He stated that the School District reported that the new Sobrato High School is on schedule for a fall 2004 opening and that they recently held an open house. He stated that he toured the construction taking place and the future plans for the site. In addition to this committee, the City-School District has put together an ad hoc committee to talk about the opportunity to joint plan some facilities. He indicated that this committee has met twice and that high on the agenda has been the library and corporation yard. Other items to be discussed are future parks in the city and how they can be better coordinated with future/existing schools. He indicated that this ad hoc committee has been given a 90-day window and that it is his hope that this ad hoc committee will have something to report back soon. He stated that he also serves on the Council's Economic Development Subcommittee, indicating that an extensive report will be presented on the downtown RFP process that has been a vast majority of the committee's work lately. He stated that he would defer his comments to the discussion of this item later on the agenda. He indicated that the Live Oak High School Performing Arts class is presenting Westside Story on March 25, 26 and 27 and April 1, 2, and 3 at the Live Oak Little Theater.

Council Member Tate presented an update on the Library subcommittee. He indicated that the subcommittee will return with a recommendation on how the City will supply a library to the community and have a plan in place by June should the City not receive State funding. He said that two efforts are taking place at this time: 1) site selection and 2) financing efforts. Although they intermingle, he is trying to keep them separate. He said that the last time the library subcommittee reported there were four potential sites: two at the civic center and two or more in the downtown area. He stated that the subcommittee believes that there are two viable library sites. It is believed that the idea of using the existing location for the library is not a good one as it would be a lost asset to the City. It would result in a lot of disruption while it is being built and that there is not a significant amount of savings by going to this location. Therefore, the civic center option is the site behind City Hall, the same site as the Proposition 14 application. He indicated that the library subcommittee met with the School District about the potential use of the Britton Middle School site but that the School District believes that they need the site in terms of their own flexibility for future uses/options that they are looking at (e.g., reconfiguration of the Britton Middle School campus). He indicated that the library subcommittee is proceeding as though this is the preliminary signal from the School District that the Britton Middle School site will not be an option. He stated that this results in one other option in the downtown area, the Sunsweet site located between Third and Fourth Streets, on the Depot side. He indicated that the library subcommittee, Library Commission and other citizens met last week with Rocke Garcia, owner of the Sunsweet site. He indicated that Mr. Garcia has volunteered to come up with a design for the library, hiring an architect and meeting with Nancy Howe, the local librarian and Sara Flowers, the County Deputy Librarian, to talk about the design that they would like to see. He indicated that the Proposition 14 application stipulates a 40,000 square foot library facility. It is now felt that a 26,000-30,000 square foot library may be appropriate. He indicated that the library subcommittee is recommending that the City proceed with a design of this size. He said that a study is being undertaken in terms of the exact programming that would determine the appropriate square footage that

would be appropriate for the community. He indicated that the library subcommittee will be taking these two options and design for the proper sized library. He stated that it is proposed to have a lot of public outreach with these designs, asking the public for its preference of a library site. One of the things being suggested with the downtown site is that the City works on a lease arrangement. He stated that the library subcommittee has requested that the City Manager study the options to determine if they are feasible and whether there is a potential for savings with new construction. He stated that with any library scenario, there is a funding gap. It was his belief that the library subcommittee would be asking the Council for workshop sessions to study options as the City goes along to determine whether the alternatives are viable options or whether there were other alternatives.

Mayor Pro Tempore Sellers indicated that he and Council Member Chang serve on the multi generational center (IRC) committee. He indicated that the design development is proceeding on schedule. He stated that the committee met with the architects on February 9 to review the design. In keeping with Council concerns about the budget, the committee spent most of its time discussing value engineering to determine whether there were better ways of doing things or whether there were items that the City is spending money on that were not necessary. He stated that the architects have kept on budget, indicating that this work is continuing on pace with a report to be presented to the Council in April.

Council Member Chang indicated that the SCRWA Board will be holding a workshop on March 9, 2004 to discuss the future plans for expansion and discharge issues. She requested that Council members forward any comments or ideas about these two items to her or Council Member Carr.

### **CITY MANAGER REPORT**

City Manager Tewes stated that he would reserve his comments relating to the City's budget to later this evening. He advised the Council that staff has begun to prepare budget recommendations for the year that begins July 1, 2004. He said that the City anticipates the most challenging budget in a decade. Therefore, it is important for the City to begin to develop a series of options that will be presented to the Council as there will be difficult budget decisions to make.

### **CITY ATTORNEY REPORT**

City Attorney Leichter indicated that she did not have a report to present this evening.

### **PUBLIC COMMENT**

Mayor/Chairman/President Kennedy opened the floor to public comment for items not appearing on this evening's agenda.

Mayor Pro Tempore/Vice-chair Sellers announced the Morgan Hill Community Foundation's first annual Directors Ball, "A Night in Hollywood," to be held on Saturday, February 28, 2004 at 7 p.m. He

stated that this event will benefit the Foundation that supports a wide range of projects throughout the community.

Mayor/Chairman Kennedy announced that Silicon Valley Reads will feature a book written by Ray Bradberry entitled *Fahrenheit 451*. He indicated that there will be an introduction/showing of the book at the Community and Cultural Center on March 7, 2004 from 2:30–4:30 p.m.

No further comments were offered.

Mayor/Chairman Kennedy recommended that item 26 be considered following agenda item 22.

Council Member Tate and Mayor Pro Tempore Sellers noted that there were other individuals in attendance this evening to address other items on the agenda and recommended that the Agenda order be followed.

## ***City Council Action***

### **CONSENT CALENDAR:**

Mayor Kennedy requested that item 9 be pulled from the Consent Calendar.

**Action:** *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Approved** Consent Calendar Items 2-8 and 10-17 as follows:*

2. **JANUARY 2004 FINANCE & INVESTMENT REPORT**  
**Action:** **Accepted** and **Filed** Report.
3. **PERFORMANCE MEASURE UPDATE – SECOND QUARTER FISCAL YEAR 2003-04**  
**Action:** **Received** and **Filed**.
4. **STATUS OF GOALS ADOPTED BY THE CITY COUNCIL ON FEBRUARY 26, 2003**  
**Action:** **Accepted Report** on the Status of Goals Adopted by the City Council on February 26, 2003.
5. **RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) 2003 QUARTERLY REPORT #4**  
**Action:** **Accepted** and **Filed** the RDCS Fourth Quarter Report for 2003.
6. **SUBDIVISION APPLICATION, SD-03-12: SAN PEDRO-DICONZA**  
**Action:** **Took No Action**, Thereby Concurring with the Planning Commission's Decision Regarding Approval of the Subdivision Map.

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7. **REIMBURSEMENT FOR PUBLIC IMPROVEMENTS BY COYOTE CREEK ESTATES (TRACT 9396)**  
*Action: 1) **Approved** Appropriation of \$38,656 from Current Year Unappropriated Measure P Capital Improvement Fund (CIP) to fund this Reimbursement; and 2) **Authorized** the City Manager to Execute the Reimbursement Agreement on Behalf of the City.*
  8. **AQUATICS CENTER PROJECT – JANUARY CONSTRUCTION PROGRESS REPORT**  
*Action: **Information Only.***
  10. **GALVAN PARK HANDBALL COURT AND LANDSCAPE BEAUTIFICATION PROJECT**  
*Action: 1) **Accepted** as Complete the Galvan Park Handball Court and Landscape Beautification Project in the Final Amount of \$63,954.00; and 2) **Directed** the City Clerk to File the Notice of Completion with the County Recorder's Office.*
  11. **FILING OF PROPOSITION 40 GRANT APPLICATION FOR THE COMMUNITY PARK IMPROVEMENT PROJECT**  
*Action: 1) **Adopted** Resolution No. 5768, Approving the Filing of an Application for Local Assistance Funds From the Proposition 40 Per Capita Grant Program Under the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002; and 2) **Designated** the City Manager as the Authorized Agent to Submit and Execute All Documents Related to the Grant.*
  12. **PURCHASE OF NEW SEWER FLUSHER**  
*Action: 1) **Approved** the Purchase of a 2004 "Vac-Con" Hydraulic Sewer Cleaner for the Sewer Division at a Total Price of \$208,564.10 in Accordance with Section 3.04.150.B and Section 3.04.180 of the Municipal Code – Purchase Through another Government Entity; and 2) **Declared** R87101 (Pickup Truck) and S87112 (1987 Vactor Hydraulic Sewer Cleaner) as Surplus Equipment.*
  13. **APPROVE COUNCIL POLICY REGARDING DELEGATION OF AUTHORITY TO SETTLE CLAIMS AND LAWSUITS**  
*Action: **Approved** Council Policy 04-01 Regarding Delegation of Authority to Settle Claims and Lawsuits.*
  14. **APPROVE PURCHASE OF CMAS PRODUCTS FOR THE FURNISHINGS, FIXTURES, AND EQUIPMENT (FF&E) FOR THE NEW POLICE FACILITY**  
*Action: **Authorized** the City Manager to Approve a Purchase Order in the Amount of \$68,340.25 to Partners in Progressive Storage Solutions for the Furniture, Fixtures and Equipment (FF&E) at the New Police Facility.*
  15. **ADOPT ORDINANCE NO. 1654, NEW SERIES**



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**Action:** ***Waived** the Reading, and **Adopted** Ordinance No. 1654, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT, DA 03-14 FOR MP 02-19: EAST CENTRAL - WARMINGTON (APNs 726-20-003 & 726-28-048 through 052).***

**16. THE LOCAL TAXPAYERS AND PUBLIC SAFETY PROTECTION ACT**

**Action:** ***Adopted** Resolution No. 5769.*

**17. MID-YEAR 2003-2004 BUDGET ADJUSTMENTS**

**Action:** ***Approved** Proposed Mid-Year Budget Adjustments for Fiscal Year 2003-2004.*

**9. ACCEPTANCE OF SAN PEDRO POND FENCING PROJECT**

Mayor Kennedy indicated that this particular project has only one access point, noting that this is a long trail. He expressed concern about emergency access, especially if someone is alone and had a problem. He stated that you would have to walk about a mile to get back to the front entrance. He suggested the installation of a 911 box, an emergency access gate or a second entrance on the San Pedro side. He requested that staff look at possible solutions that may address this concern.

City Manager Tewes stated that staff could analyze options and include a recommended solution as part of next year's budget.

**Action:** *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0): 1) **Accepted** as Complete the San Pedro Ponds Fencing Project in the Final Amount of \$74,706.18; and 2) **Directed** the City Clerk to File the Notice of Completion with the County Recorder's Office.*

***City Council, Redevelopment Agency, and Financing Authority Commission Action***

**CONSENT CALENDAR:**

**Action:** *On a motion by Council/Agency/Commission Member Tate and seconded by Council/Agency/Commission Member Carr, the City Council, Redevelopment Agency and Financing Authority Commission unanimously (5-0) **Approved** Consent Calendar Item 18 as follows:*

**18. MINUTES OF JOINT SPECIAL AND REGULAR CITY COUNCIL, SPECIAL REDEVELOPMENT AGENCY, AND MORGAN HILL FINANCING AUTHORITY COMMISSION MEETING OF FEBRUARY 4, 2004**

**Action:** Approved Minutes as Written.

## ***City Council Action***

### **PUBLIC HEARINGS:**

**19. ZONING AMENDMENT, ZA-03-14/DEVELOPMENT AGREEMENT, DA-03-11: SAN PEDRO-DICONZA – Ordinance Nos. 1655 and 1656, New Series**

Director of Community Development Bischoff presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:** On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) Approved the Mitigated Negative Declaration.

**Action:** On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) Waived the Reading in Full of Ordinance No. 1655, New Series

**Action:** On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council Introduced Ordinance No. 1655, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ADOPTING A PRECISE DEVELOPMENT PLAN CHANGING THE ZONING FROM R2-3,500 TO R2-3,500 RPD ON A 6.6-ACRE LOT AT THE NORTHEAST CORNER OF SAN PEDRO AVENUE AND BUTTERFIELD BOULEVARD. (APN 817-11-061, ZA-03-14: SAN PEDRO-DICONZA)**, by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

**Action:** On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) Waived the Reading in Full of Ordinance No. 1657, New Series.

**Action:** On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council Introduced Ordinance No. 1656, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT, DA 03-11 FOR APPLICATION MP-02-07: CORY-SAN PEDRO PARTNERS. (APN 817-11-061)**, by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

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**20. COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) RE-PROGRAMMING OF FUNDS FOR DAYWORKER CENTER**

Assistant to the City Manager Eulo indicated that the Council may wish to consider agenda item 24 in conjunction with agenda item 20 as the two items are closely related and both involve funding to make the dayworker center a reality.

**Action:**        *It was the consensus of the City Council/Redevelopment Agency to consider items 20 and 22 at this time.*

Assistant to the City Manager Eulo presented the staff report, indicating that he attends the dayworker committee board meetings as the City's liaison. He stated that Board's activities are focusing on fundraising from this point forward as raising funds is an ongoing activity that will be necessary in order to make the dayworker center operational once the center is opened. He indicated that what is proposed this evening is the reprogramming of \$50,000 in CDBG funds in item 20 that is currently allocated to the Galvin Park Improvement projects. He said that the \$50,000 for the Galvin Park project can be made up in the CDBG project that the Council will be undertaking in a month under this federal fiscal year cycle.

Council Member Carr referred to the 2004 CDBG cycle and inquired how much the City would have to allocate.

Director of Business Assistance and Housing Services Toy responded that there would be \$130,000 available in the 2004 non public service funds to allocate.

### ***City Council and Redevelopment Agency Action***

#### **OTHER BUSINESS:**

**24. OFF-SITE IMPROVEMENTS FOR DAY WORKER CENTER – *Resolution Nos. 5770 and MHRA-248***

Director of Business Assistance and Housing Services Toy presented the staff report. He indicated that the latest estimate for the installation of offsite improvements is upwards of \$195,000. Of this amount, \$180,000 would be allocated to the developer and \$15,000 would be allocated to the dayworker project. He highlighted the deal points of the loan. He indicated that funds for the loan would not come from the economic development funds set aside for the downtown. He indicated that there is approximately \$400,000-\$500,000 within the budget that is called loans and grants and that Council action this evening would take approximately half of these funds.

Council/Agency Member Tate stated that the economic development strategy talks about allocating funding to the downtown. It was recommended that funding be in terms of a loan with quick

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turnarounds in order to keep the money working. He did not believe that a 10-year loan is a quick turn around.

Mr. Toy indicated that staff originally proposed a loan due in five-years. The developer returned with a request for a 10-year loan. After negotiations, it was agreed to have the loan deferred for five years and payable over the remaining five years with the direction of having a shorter payback period.

Mayor Pro Tempore/Vice-chair Sellers noted that staff indicated that the loan was due upon moving ahead with the project (pulling permits). He stated that the Council/Redevelopment Agency wants the project to proceed sooner than 10-years. He felt that it would be highly likely that the money would be paid back sooner as a private sector has a strong interest in doing so. If this is the case, he would be comfortable with the action being recommended.

Mayor/Chairman Kennedy opened the floor to public comment for items 20 and 24.

City Manager/Executive Director Tewes indicated that there is a committee of community individuals who are sponsoring the dayworker center project. He clarified that the lease/security agreement is to be with the Archdiocese of San Jose.

Leslie Miles indicated that she is the owner of the property and architect for the project, but is not the contractor for the dayworker center. She said that the requirement to complete the section along Depot for curb, gutter, sidewalk, and underground utilities came up. She agreed that the installation of the offside improvements was a good thing to do as the water from Main Avenue is creating a large lake at the corner of the property. However, it is a situation where she is viewing the dayworker center as a temporary use for the site. She stated that it is her intent to develop the site as soon as possible after the dayworker center has been in the location for the period of time agreed upon.

Council/Agency Member Tate noted that the dayworker center use is a temporary three-year use. He inquired as to the reason for the 10-year repayment period.

Ms. Miles clarified that the loan was amortized over a ten year period. She said that one of the items that was agreed upon was that when she pulls a permit, the loan would come due. She indicated that she has to pull a building permit within four years. What she is paying on the property would require that she proceed as quickly as possible once the dayworker center has moved to a new location. She clarified that she is requesting a 10-year amortization and that she would start paying back the loan in five-years.

Council/Agency Member Carr inquired as to the term of the \$350,000 loan previously approved to Weston-Miles.

Ms. Miles responded that the \$350,000 is a 3-year loan and that she anticipates incorporating the loan into her long term financing plan this fall. She stated that she would not develop that section of Depot if

it were not a requirement. She stated that the dayworker center is driving this part of the off site improvements and the need to fix the drainage problem.

No further comments were offered.

Mayor Pro Tempore/Vice-chair Sellers indicated that normally, when the City allocates CDBG funds, there is a specific set amount of funding going to a specific project. He stated that he would like the Council/Agency Board to find a way to have the opportunity to recover some or all of these costs by encouraging the applicants to return any unused funds. Given that there are some concerns about a loan and the fact that there is an institution involved, it makes it more difficult to set up a direct loan. He stated that he was inclined to proceed this evening if the City can figure out a way to ensure that everything will be done to minimize the amount of funds to be used so that the funds can be returned. As an alternative, a loan is set up such that the City would have the opportunity to see these funds recirculated back in the future. He inquired if this was an area that the Council/Agency Board could give staff latitude as he does not want to delay action this evening.

Council/Agency Member Tate concurred with Mayor Pro Tempore/Vice-chair Sellers. It was his hope to receive a report that the project would not require the full \$50,000 as he heard that there were some cost savings being looked at.

Mr. Eulo assured the Council that every effort is being made, on staff's part, to assist the dayworker committee to reduce costs. If it does not take the full \$50,000 to install the off site improvements, City staff would not allow the committee to draw down on this funding. He was confident that the dayworker committee would have a hard time making up the loan that is being suggested with item 24 and that adding another loan at this point would be unrealistic. He said that there is one cosmetic change that could be made that may save some money. He noted that the building is required to install metal siding in order to match the granary building. This cosmetic element would cost some money and that this is an element that could be eliminated in the interest of saving money. He said that staff will do what it can to assist the dayworker committee in finding other opportunities to reduce costs.

Mayor Pro Tempore/Vice-chair Sellers noted that the granary building no longer looks like the granary. Therefore, he was not sure that there was a need for the dayworker center building to match it at this point. He encouraged staff to eliminate the metal siding and any other items that might further reduce costs.

Council/Agency Member Carr stated that this has been an issue that has been before the Council many times and that it has been a difficult discussion. He said that everyone wants to find a solution to what is taking place with the dayworker community in Morgan Hill. Everyone wants to find a solution that provides a safe and reliable place for individuals who are seeking work. He noted that the Council has struggled with funding for this project and that it was stated from the beginning that this was not something the City wanted to get involved with as the City should not be the one to solve this problem. He stated that a great church community group has come together to try and assist the dayworkers. He stated that he has struggled with this issue, noting that each and every council member has gone out and

tried to help in different ways. The Council also struggled with the idea of changing one of its ordinances specific to this project to allow interim uses so that some of the requirements would be easier and less expensive to accomplish. It was proposed to the Council, at that time, that changing the ordinance would make up the financial gap and not necessitate further financial assistance from the City. He noted that this has not been the case. He stated that he struggles with the use of CDBG funds because it takes away from other uses. There is a great concern that these federal dollars are not included in the President's budget. The other items that the Council thought about using these dollars for will certainly be gone if the Council starts using the dollars in advance. However, the Council has a significant issue before them that needs to be resolved. He recommended that the City find ways to make sure that the allocation of dollars is only what is needed and nothing more. He further recommended that the City figure out a way to make sure that some of these dollars come back to the City. This would make the Council/Agency Board feel comfortable in supporting the actions and moving forward with it this evening. With the idea that the CDBG dollars would be used in such a way that the City would see some of these dollars come back and that staff makes sure that only the dollars needed will be used, he would be able to support the action this evening.

#### **COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) RE-PROGRAMMING OF FUNDS FOR DAYWORKER CENTER**

**Action:**        *On a motion by Council Member Chang and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Approved** the Re-Programming of Fiscal Year 2003-2004 CDBG Funds.*

**Action:**        *On a motion by Council Member Chang and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Authorized** the City Manager to do Everything Necessary and Appropriate to Re-Program CDBG Funds, Including the Execution of All Required Documents to Transfer Funds to the Day Worker Project with the stipulation that the funding will be monitored, used only as necessary, and that the funds are to be paid back as soon as possible.*

#### **OFF-SITE IMPROVEMENTS FOR DAY WORKER CENTER**

Council/Agency Member Tate indicated that he understands that the developer would like a 10-year loan. He also understands why the loan should be amortized for the dayworker center. However, he did not understand why the City would want to amortize the loan for the developer because they are going to develop the property as soon as possible. He stated his support of a seven-year amortization period.

Mr. Toy clarified that the terms of the loan are such that it would be a five-year deferred loan or due and payable upon pulling permits for the permanent development of the property, whichever comes first.

Council/Agency Member Carr stated that he sits on the City's economic development subcommittee and that this committee has spent a lot of time going through a process for improving the downtown. He

noted that the City has a specific amount of set-aside dollars reserved for the downtown. The way that the loan is set up does not match his understanding of the downtown association's interest on how these dollars are to be used. He said that the economic development subcommittee has tried to pay a lot of attention to how the downtown dollars are used. He stated that he understood that the offsite improvement requirements are important in order to complete the dayworker center. However, he was troubled by the way economic development assistance packages are being put together because the City has not established a criteria, or provided continuity to individuals who are interested in pursuing development in the downtown. Therefore, he continues to have reservations about this request.

***Acting as City Council:***

**Action:** *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Chang, the City Council, on a 4-1 vote with Council Member Carr voting no, **Adopted** Resolution No. 5770, Making Findings Required by California Redevelopment Law.*

***Acting as Redevelopment Agency:***

**Action:** *On a motion by Vice-chair Sellers and seconded by Agency Member Chang, the Agency Board, on a 4-1 vote with Agency Member Carr voting no, **Adopted** Resolution No. MHRA-248, Making Findings Required by California Redevelopment Law.*

**Action:** *On a motion by Vice-chair Sellers and seconded by Agency Board Member Chang, the Agency Board, on a 4-1 vote with Agency Member Carr voting no, **Authorized** the Executive Director, Subject to City Attorney Review and Approval, to do Everything Necessary to Modify, Execute and Implement Loan Agreements with the Day Worker Committee, or its Designee, for an Amount not to Exceed \$15,000; and Weston-Miles Architects for an Amount Not to Exceed \$180,000, to Install Off-site Improvements for the Day Worker Center Located on Depot Street.*

**21. ZONING AMENDMENT ZA-03-19: CITY OF MORGAN HILL – ZONING TEXT AMENDMENT/ COMMUNITY ACTIVITY SIGNS AND CHANGEABLE COPY SIGNS FOR PUBLIC AGENCIES, SCHOOLS, PLAYHOUSES AND RELIGIOUS INSTITUTIONS** (Continued from 1/21/04)

Director of Community Development Bischoff presented the staff report, informing the Council that this item is not ready for its consideration. He recommended that the public hearing be continued to March 17, 2004, following receipt of public testimony.

Mayor Kennedy opened the public hearing. No comments were offered.

**Action:** *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Continued** Public Hearing to March 17, 2004.*

**22. SUBDIVISION APPLICATION, SD-03-08/ZONING AMENDMENT APPLICATION, ZA-03-10/DEVELOPMENT AGREEMENT, DA-03-06: WATSONVILLE-SOUTH COUNTY HOUSING** (Continued from 12/17/03)

Director of Community Development Bischoff presented the staff report. He identified the three alternative site plans consisting of a 10, 11 and 12 unit project prepared by South County Housing. He indicated that planning and engineering staff believes that the 10-unit alternative is a better alternative in terms of livability of the project as it provides more parking and driveway aprons. It provides more common open space that can accommodate a tot lot and guest parking. It also provides for greater setbacks from Watsonville Road and other streets. However, there are cost implications related to this alternative.

Mayor Kennedy indicated that Scheme 1 is a proposed duet development, similar to the existing development. He noted that Scheme 1 provides two car garages but lacks driveway aprons.

Mr. Bischoff informed the Council that Scheme 1 is similar in design to that of the Creekside development, indicating that the City has had a number of problems with individuals not parking in their garages. Individuals park next to their garages to drop off groceries or park for an extended period of time, prohibiting others from getting by or from backing out of their garages, creating problems.

Business Assistance and Housing Services Manager Maskell presented a brief history of the project that started with a 2001 teacher survey. The survey results indicate that teachers interested in affordable housing were those starting out in the teaching profession (4 years or less). In 2002, the Council adopted a goal of working with the School District to find a way to assist teachers and provide affordable housing. In the winter of 2002, the City decided that the Watsonville site might make a good site for teacher housing. In April of 2002, staff sent out a request for qualifications to 12 developers, including the developer that built the project adjacent to this project. She indicated that only one response was received, that response being from South County Housing. South County Housing proposed a 7-unit project in September 2002. The Council asked staff to return with a denser project. Teacher focused group meetings were held, including meetings with the neighbors. This resulted in a 12-unit project being brought before the Council in November 2002. In April 2003, the project received Measure P allotments and County home funding was granted in May 2002. In August 2003, the Planning Commission heard the tentative map for the project with the Council hearing the same request for tentative map approval in December 2003. This was when staff was asked to go back and take another look at the density for this project. As a result, South County Housing and staff have returned with the alternatives before the Council this evening.

Jan Lindanthal informed the Council that what she learned from talking to teachers was that the ability to purchase a home was a key factor in being able to live in a school district where they are teaching. This was also a key factor for the School District in being able to attract/retain teachers. She said that whatever program is developed for the site needs to be targeted to serve entry level teachers to the maximum extent possible so that they can afford to purchase a home. The teachers, at the time, felt that there was more than enough demand for the 12-units being proposed. She informed the Council that



South County Housing met with the adjacent neighbors twice to discuss several different alternatives and try to understand their concerns. Concerns raised by the neighbors were: no direct access from the project to Via Naretto; that enough guest parking be provided; the duplex and tri plexes to be designed so that the massing matched their neighborhood; and no shared amenities with their existing subdivision. She addressed the 12-unit site plan presented to the Council at the December meeting. She stated that although the 12-unit design is denser in terms of the number of units per acre, it is less dense if you look at a building coverage or a floor area ratio calculation. She indicated that the adjacent development has a floor area ratio of 59% and the 12-unit development, as proposed, had a floor area ratio of 53%. Although the project had more units, the units were smaller. Therefore, there would be less building coverage on the site. She performed perspectives to show what the project would look like next to the existing units to determine whether the massing would be consistent. She heard from the Council, in December 2003, that it was concerned with the overall density, that the project maximizes useable open space, quality of life be maintained for the residents who would reside in the units, be creative as possible with respect to leveraging possible financing sources to reduce the Agency's contribution (make the project as affordable as possible), and that there be sufficient parking. She indicated that concerns were expressed about the condition of Watsonville Road as you turn into Calle Sueno and whether there was adequate width to mitigate the situation. She indicated that South County Housing took the comments expressed by the Council and looked at the project with a fresh perspective. She indicated that South County Housing tried to come up with a design that would address the concerns of the Council. She looked at taking advantage of the City's modified attached ordinance to determine what the project would look like. If the modified attached housing ordinance was used, there is a question whether the project could be designed with fewer variances, yet provide driveway aprons and have more lots meeting minimum lot size, width, setbacks, etc. She indicated that the design that was derived has a floor area ratio of 47%.

Ms. Lindanthal stated that 4-homes are targeted for entry level teachers. She indicated that an entry level teacher earning as little as \$34,000-\$35,000 per year would be able to purchase a home. The median homes would be serving teachers who have been with the School District a longer period of time or have a dual family income. The moderate income homes would serve teachers earning \$90,000-\$126,000. If it is the Council's goal to target entry level teachers, the Council would need to write down \$350,000 of the cost for median priced homes to get the homes down to a selling price of \$235,000. She addressed the financing assistance that she has brought to leverage the Agency funds (e.g., California Finance Agency; Housing Trust Fund of Santa Clara County, Redevelopment Agency Funds, County Home Funds, Below Market Rate Mortgage Financing through their affiliation with Neighborhood Housing Services of America, and down payment assistance through Neighborhood Reinvestment).

Ms. Lindanthal addressed the pros and cons for the 12-unit and 10-unit alternatives. She stated that the 10-unit scenario would provide larger homes, more parking and usable open space, no special insurance requirements, and that it is cheaper to build per square foot basis. However, as there is the same fixed cost being spread over fewer units, the overall cost per unit is higher. The cons with a 10-unit alternative: two fewer homes, two fewer teachers to be assisted, higher total cost per unit and a higher Agency contribution per unit. The pros for the 12-unit scenario: lower total cost per unit; two more homes for teachers; and the massing would be more compatible with the adjacent subdivision. The cons

for the 12-unit scenario: less amount of guest parking; less usable open space; units are smaller; and requires special insurance. She felt that the 12-unit alternative can be a livable environment and can work. She felt that the benefit of assisting two additional teachers outweighs the concerns as they relate to density and that she stands by the 12-unit alternative as proposed. However, she stated that South County Housing is willing to treat this as the partnership that it is, and move forward with whatever the Council decides.

Mayor Kennedy opened the public hearing.

Dan Kenney stated that he likes the reduction to a 10-unit project as it makes sense for the lot size. He noted that the lots are still being proposed on Watsonville Road. He felt that this will be an issue if there are children, as Watsonville is a busy road. He did not believe that the turn issue has been addressed as it is a safety issue. He supported additional parking to avoid parking on the street and blocking the right turn onto Calle Sueno. He said that there would be less density with triplex units. Two of these units could be set aside at market price or median price and one unit at the lower end price. He was pleased that a less dense project has been designed as he felt that 12-units were too high. He felt that a 12-unit triplex development would still result in a density issue. He said that triplex designs work better with increased open space and parking; moving the units away from Watsonville Road so that they are facing inside the community.

Ron Sjostedt informed the Council that he is a teacher. He stated his support of affordable housing for teachers as he was able to come to this community under the City's BMR program. On behalf of other teachers, he felt that it was important that the City provide affordable housing to teachers so that they stay in the community.

Ramona Devaraj, on behalf of the Via Sorrento Board of Directors, stated that they welcome teachers or any other individual who would come into their neighboring community, including the use of the existing park. She stated that the development that is built with code violations cannot offer a quality of life. Of the two options being presented, she supported the lower unit number as it would make the neighborhood and teachers happy, improving quality of life.

Keith Gargitano said that the detached units would look denser as they have been spaced three feet apart. He felt that South County Housing would like to develop a 12-unit project and would do everything to show that this is a better alternative. He inquired why the \$500,000 was not added to the \$855,000 and then calculated to the number of families that the project would help. He felt that numbers were being manipulated. It was his hope that the Council is looking at the proposal and realizing that it is receiving a presentation from individuals who are investing in themselves.

Richard Punches indicated that he is a beneficiary of the City's BMR program. He said that other teachers are waiting to get into a home so that they can participate in after school/community activities instead of driving hours to get to their homes located in another community.

Eugene Strangio indicated that he too was a beneficiary of the City's BMR program. He said that the fear of a neighborhood being brought down and the devaluation of home prices are unfounded. He indicated that that this project is needed in the community and that new teachers would take advantage of the project. He said that one of the first things that new teachers mention is the difficulty of housing prices in the area.

No further comments were offered.

Mayor Kennedy inquired whether a 10-unit project, incorporating some of the suggestions made (e.g. 10-unit duet concept), would make a significant change to what has been presented.

Ms. Lindanthal stated that if you grouped the 10-units together, it would result in zero lot line homes, would not afford a patio area and would have two car garages. She indicated that the open space would be the area between the homes. She said that the only way to get a duet configuration would be to go back to what was originally proposed. A 10-unit duet project would result in the need for the same variances as no aprons could be accommodated based on the footprints of duet units due to the width and depth of the lot.

Jim Yee, project architect, said that it would be difficult to incorporate driveway aprons with a duplex footprint. Designing a 10-unit detached project would be cheaper to construct versus a 10-unit attached project. He said that a triplex unit adjacent to Watsonville Road may work. He said that the adjacent neighborhood did not want the units to be any bigger in proportion to what they have.

Ms. Lindanthal said that the goal in developing this plan was to try to come up with a design that would require fewer variances. When you push units together, the project would result in lot size, driveway aprons and the setback issues.

Council Member Tate stated his preference of the 10-unit detached alternative with zero lot lines as it accomplishes the Council's objective set in December of reducing the number of variances required. He indicated that not all variances have been eliminated but that the project has gotten closer. He felt that scheme 3 was the right alternative.

Mayor Pro Tempore Sellers agreed with Council Member Tate, noting that significant concerns were raised initially about the project. On one hand, it had viability and on the other hand, livability. He noted that there were concerns from the neighborhood that it would not fit in. He stated that the issue about the driveway aprons was a concern of his as driveways are not used as intended. Of the options that are available in terms of financing, viability, and livability, alternative 3 is the scenario that makes sense. He stated that he would like to move forward with this scenario this evening.

Council Member Carr said that as disappointed that he is that the project is being scaled back because the need is greater than 10-units, he was pleased with what has been presented. He felt that the 10-unit alternative is an attractive design. In scaling the project to 10-units, he noted that the project is still keeping the same number of units available to the entry level teachers. He stated that the Council wanted

to target entry level teachers from the very beginning. He said that the cost per unit will go up because the City is retaining the 4 units available to entry level teachers. He agreed that there is a need in Morgan Hill to provide housing assistance for entry level teachers. He felt the project would make great use of the modified attached ordinance in order to lower the cost when it comes to insurance. He stated his support of the 10-unit alternative.

Mayor Kennedy noted that there is a general consensus for the Scheme 3 alternative by the Council/Redevelopment Agency.

City Manager Tewes indicated that one of the speakers raised the question about the presentation, specifically the Redevelopment Agency's investment in the project. He felt that there may have been some misunderstandings. He stated that it is the Redevelopment Agency of Morgan Hill that is required by law to set aside 20% of its resources to help fund the production of low and moderate income housing. He indicated that the total assistance available, including the land, is \$855,000.

Mr. Toy informed the Council that the initial Redevelopment Agency investment for 10-units is more than \$855,000 but that the net investment of the Agency is \$855,000. He clarified that after the homes are sold, the City gets paid back a partial amount that has been fronted.

Ms. Lindanthal clarified that the value of the land is at \$400,000.

Council Member Tate said that when he spoke with Ms. Lindanthal about this project, it was discussed that the City will have this problem in the future again. He said that variances will be necessary for affordable projects. He recommended that the Council conduct a workshop to discuss the variances that may be necessary for affordable projects, establishing policies for affordable housing.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Continued** Public Hearing to March 24, 2004.*

**Action:**        *It was the consensus of the City Council to **Support** the Scheme 3 alternative design.*

## ***Redevelopment Agency Action***

### **OTHER BUSINESS:**

#### **23.    WATSONVILLE ROAD TEACHER HOUSING PROJECT – FIRST AMENDMENT TO THE PREDEVELOPMENT LOAN AGREEMENT**

Director of Business Assistance and Housing Services Manager Maskell presented the staff report.

Mayor Kennedy opened the public comment. No comments were offered.

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**Action:**      *On a motion by Vice-chair Sellers and seconded by Agency Member Tate, the Agency Board unanimously (5-0) **Approved** the First Amendment to the Predevelopment Loan Agreement with South County Housing Corporation (SCH), Increasing the Loan Amount by \$100,000.*

**Action:**      *On a motion by Vice-chair Sellers and seconded by Agency Board Member Tate, the Agency Board unanimously (5-0) **Authorized** the Executive Director to Execute the Agreement.*

## ***City Council and Redevelopment Agency Action***

### **OTHER BUSINESS:**

#### **25.      DOWNTOWN REQUEST FOR CONCEPTS PROCESS**

Director of Business Assistance and Housing Services Toy presented the staff report, indicating that what is before the Council/Redevelopment Agency is the Council Economic Development Subcommittee's (EDS) recommendation related to responses received from the downtown request for concepts process. He said that the EDS is making a variety of recommendations on actions relating to quick hitters and requesting that the City issue an RFP to the remaining 12 proposals in the process.

Council/Agency Member Chang noted that there is one applicant that the EDS is recommending go toward RFP. She indicated that this applicant is her insurance agent and inquired whether she would be considered a common law conflict on this application.

Mayor Pro Tempore/Vice-chair Sellers said that every member of the Council/Redevelopment Agency would have a common law conflict and each would have to step down.

Council/Agency Member Carr indicated that there were several exciting projects being proposed and thanked individuals who submitted requests/proposals and their willingness to work with the City on different things.

Council/Agency Member Tate indicated that the EDS separated the proposals into quick hitters and the ones that should go to an RFP process. He stated that the EDS has received input from some of the members of the Downtown Association, comments from Council/Agency Member Chang and himself in terms of how the City will fund the library. He indicated that the City is looking for a potential site for a library in the downtown. There is a question whether it would be fair to move forward with an RFP process if the City did not really intend to follow through with it. He indicated that he and Council/Agency Member Carr share this concern, understanding that there is a long uphill battle to try and find funds for the library. Regarding the recommendation relating to the quick hitters, he felt that Mr. Toy did an excellent job explaining the recommendations.

Mayor/Chairman Kennedy noted that the owner of the Sunsweet site has submitted a request.

Council/Agency Member Tate said that it is his understanding of the Sunsweet request is that it would be complimentary to the site for the library in terms of designing a wide pathway down the middle of Third Street, adjacent to the library. This would make for a very attractive setting for the library, including lighting. He stated that it was also his understanding that the Sunsweet proposal does not propose to pay for any of the construction costs associated with the library.

Mayor Pro Tempore/Vice-chair Sellers stated that the City already provided initial funding to the Downtown Association to help the DiSalvo project on Monterey Road get off the ground. He noted that the project is not up and running and that the physical structure is not available as a retail facility as quickly as was anticipated. He recommended latitude in allocation be given to the Executive Director to make sure that the project works as the City already made an investment to this project and not place it at risk.

Mr. Toy indicated that staff felt that the art guild and gallery (DiSalvo project) would be up and running sooner. He indicated that the owner recently pulled a building permit as a result of trying to resolve issues with the fire and pretreatment departments. He said that the Planning Commission wanted to make the project subject to ARB review who had some concerns. He said that there was 1 ½ - 2 months delay. It was staff's belief that the project would be up and operating in January 2004 but that it looks like the project would not be up and running until March 2004. He said that it was his understanding, from the owner, that she is anticipating four months worth of revenue starting in January 2004 in the range of \$12,000-\$16,000 to be generated. This amount would be used to help keep the operation running after April 2004. The owner has expressed concern that she does not want to undertake this project in March and April if she does not have a commitment of funding because she will go under in May. The owner will want funding committed so that she knows that she has a full six month period of time to get the business up and running.

Mayor Pro Tempore/Vice-chair Sellers indicated that he spoke to the business owner, indicating that she did not request funding. However, he recommends that the Council/Agency Commission give latitude to the Executive Director should additional resources needed. He felt that this would be a minimal amount of funding but would ensure the success of what he believes would be an outstanding project.

Mayor/Chairman Kennedy opened the floor to public comment. No comments were offered.

Council/Agency Member Tate noted that the last staff recommended action is to move forward with the request for proposals. He indicated that the EDS would be conducting more discussion before finalizing its recommendation.

***Acting as City Council:***

**Action:** *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Accepted** the Council's Economic Development Subcommittee Recommendations Regarding the "Quick Hitter" and "Information*

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*Gathering” Proposals under the Downtown Request for Concepts (RFC) Process as Described in the Staff Report’s Table.*

***Acting as Redevelopment Agency:***

**Action:** *On a motion by Vice-chairman Sellers and seconded by Agency Board Member Tate, the Agency Board unanimously (5-0) **Authorized** the Executive Director to do Everything Necessary and Appropriate to Implement the Recommendations, Including Preparing and Executing Documents for Triple Facade Grants and Loans, Not to Exceed the Recommended Amounts, authorizing the Executive Director additional latitude to the DiSalvo project at a not to exceed \$12,000 in assistance.*

***Acting as City Council:***

**Action:** *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Directed** the Economic Development Subcommittee to Issue the Request for Proposals to the Recommended Applicants.*

## ***City Council Action***

### **OTHER BUSINESS:**

#### **26. UPDATE ON MEDICAL SERVICES OBJECTIVES**

Joe Mueller informed the Council that a new set of objectives, as proposed by the DePaul Health Center Management Team for short term medical services objectives, were faxed to the Council today and contained a minor change as requested by Council Member Chang. He stated that the Morgan Hill Medical Health Foundation is working with the DePaul Health Center to propose the short term objectives, including a policy that goes on top of the objectives. He indicated that the policy was meant to be an overall statement of what he believes the City’s policy should be in regards to medical services. He stated that the policy recognizes the fact that there are two large groups: individuals who use Kaiser and those who do not use Kaiser. This is why the policy talks about multiple providers in the large sense. In terms of the DePaul objectives, he indicated that Andrew Barna was in attendance to address the objectives. He indicated that the six month objectives are being executed upon even though there has been a discussion period for approximately 60 days.

City Manager Tewes informed the Council that it has been presented with three documents that it may wish to consider: 1) policy objectives adopted by the Council in April 2000; 2) suggestion by the Morgan Hill Community Health Foundation about policy statements; and 3) revised material from the DePaul Health Center.

Andrew Barna, DePaul Health Center Management Team, informed the Council that JoAnn Allen sends her regrets that she could not be in attendance this evening. However, she wanted to move forward and present the objectives to the Council so that it is aware of the actions that the DePaul Health Center is committed to in terms of broad objectives. He indicated that he would be willing to answer questions.

He said that the main focus is establishing the basis for expanded medical services in Morgan Hill. In order to do so, it is felt that a physician base is needed, one that will be adequate for the community and brings focus of health care services back to the DePaul Health Center. It has been the focus to lease the medical office building that is currently open. He indicated that the DePaul Health Center has started to sign leases. They are building out a timeshare where physicians from other communities can rent out blocks of offices in order to see patients in Morgan Hill. He stated that he spoke to a San Jose physician today who would like to set up a time share at the DePaul Health Center in order to see her Morgan Hill patients in Morgan Hill. In addition to physicians, he stated that a good base for healthcare services is diagnostic services. He said that a short term objective is to provide diagnostic services within the medical office building in the next six months in association with St. Louise Hospital. He stated that it is known that urgent care is a service that the community has been interested in. He indicated that they have been speaking with two different physician groups about urgent care services in the emergency room of the hospital. In order to move into the old emergency room, facility upgrades will be necessary. The DePaul Health Center has been told that they do not need to go through the State for the upgrades, only city approval. It is their hope that they can proceed with the upgrades within a short time frame.

Council Member Tate said that the only concrete measurable objective he has heard is the establishment of a diagnostic center within six months.

Mr. Barna indicated that leasing out a majority of the office space is another measurable goal that the DePaul Health Center has. They also want to be far along in the process of providing urgent care services. He indicated that the reason that they cannot commit to opening an urgent care center in six months is due to the fact that they have to figure out the facility improvements that need to be made to the old hospital facility to meet city code. This may be a process that may take longer than six months.

Council Member Tate said that it would be helpful to see a timeline where it identifies when objectives/goals are to be accomplished so that the Council can measure progress against the timeline.

Mr. Mueller informed the Council that the short term objectives are targeted to be completed within six months. He noted that the DePaul Health Center hopes to have a plan in place for out patient services as well as having a facility ready for an urgent care. Also, it is proposed to develop a manpower plan. He said that it is important to note that the timeshare will get medical services back to where the City was when the hospital facility was opened, noting that there were a lot of timeshare doctors within the hospital facility. He felt that a lot of important actions will be taking place within the next six months.

Council Member Carr inquired whether the blue document is one that the DePaul Health Center would like the City of Morgan Hill, Morgan Hill Community Health Foundation, and the Daughters of Charity to approve. He further inquired whether the DePaul Health Center has its own board or an operating body that can approve the document as well. Is it the idea that all four bodies will approve this document?

Mr. Barna indicated that the DePaul Health Center has a community advisory board established with community members as well as member representatives of the Daughters of Charity. He stated that the



objectives were written in order to clarify the direction that they were planning on taking. This would help give the City Council something to mark and measure progress. It is his hope that all parties mentioned by Council Member Carr would accept these objectives.

City Manager Tewes said that DePaul Health Center would like to have the Council accept their objectives but that he was not sure that it was written precisely to suggest that the Council should adopt them as their public policy objectives. He indicated that the Council adopted public policy objectives in April 2000. Last year, the Council requested a review of these objectives and requested input from the Morgan Hill Community Health Foundation. When the DePaul Health Center came to light, the Council asked them what they would accomplish in terms of short, medium and long term objectives. The Council asked what role, if any, they would seek from the City or the Foundation. Therefore, the document presented is responsive to the Council's questions about what the DePaul Health Center's objectives are and the extent to which the City and/or the Foundation would be involved. He did not believe that it was intended to be a document that would be adopted wholesale by the Council as its public policy objectives. However, they may form the Council's policy objectives.

Council Member Carr noted that the document starts off with a statement of what the City of Morgan Hill is committed to doing. He felt that this was a document of what the DePaul Health Center is committed to doing to achieve the objectives of the City of Morgan Hill. He did not believe that this was clearly stated in the document and felt that the document needs to clearly state this fact.

City Attorney Leichter noted that the Council has on going litigation and that the document does not include a hospital. While she believes the document has good viable objectives from the DePaul Health Center's perspective, she cautioned the Council against giving the document its stamp of approval other than accepting the report because of the City's on going litigation.

Council Member Carr felt that it needs to be clear that these are DePaul Health Center's objectives to achieve Morgan Hill's policy objectives. He referred to short term objectives and inquired when the clock starts ticking. He referred to objective 5 where it states that the City of Morgan Hill and the Health Foundation will provide DePaul with all the information pertinent to the successful recruitment of new physicians. He inquired what pertinent information is being referenced.

Mr. Barna responded that the clock started ticking on January 2004. He indicated that the pertinent information relates to the research reports that either the City or the Health Foundation had commissioned that discussed the physician need in Morgan Hill.

Council Member Carr recommended that objective 5 be spelled out specifically so that it does not cause confusion where it is assumed that the City will provide more funding toward the successful recruitment of physicians as has been done in the past.

City Attorney Leichter referred to bullet 2 under item 8 which states that "The City of Morgan Hill will revise its health services objectives." For the reasons stated earlier, she advised the Council not to do so

at this time due to pending litigation. Without seeing what the revision would entail, she was hesitant to advise the Council to enter into a commitment by approving the document in its current form.

Mayor Pro Tempore Sellers indicated that the Council is interested in seeing revisions that are articulated differently. He said that the Council needs to consider what its role should be in the future.

Mr. Mueller informed the Council that it has three different documents before it: 1) the original policy statement proposal that the Health Foundation came back with; 2) a document that contains updated wording of the currently adopted objectives of the City Council in terms of short and long term objectives; and 3) updated objectives requested by the Council in November 2003 that identifies what will be done in six months, a year and further out. He said that the Foundation felt that the DePaul team had the best answer to updated objectives as they will be the ones performing the short term objectives. He felt that the Council needs to have a policy in place that recognizes the importance of medical services through the quality of life in the community to give guidance. He said that the Foundation has taken a lead along with actively working with the DePaul Health Center team.

Mayor Pro Tempore Sellers felt that significant progress has been made toward medical services in the past few months and that this needs to be recognized. It also needs to be recognized that it is very unusual for a City Council to get directly involved in medical services in the first place. He felt that the Council needs to reconsider its involvement and that it may be able to sit back as the Foundation has done a terrific job with the DePaul Health Center well underway.

Mr. Mueller did not believe that the Council would want to step so far back that it is not on record to have a policy.

City Manager Tewes noted that this is the fourth time that this item has come before the Council and that perhaps it has lost clarity. He said that originally, the Council asked for the opportunity to review and revise the adopted 2000 medical services objectives. Before reviewing and revising the adopted objectives, the Council asked the Foundation for its comments. Their comments arrived in the form of a proposed substitute policy statement. The DePaul Health Care came into the picture and presented to the Council the results of their planning studies and their hopes/plans for the facility. The Council asked the DePaul Health Center a series of questions, requesting that they tell the Council what the short, mid and long range objectives were. The Council has indicated that before revising the objectives, it wants to know if a new role is being proposed for the Council. He noted that their response can be found in one of the documents. With some clarity in the language, he did not believe that the DePaul Health Center is proposing a new role for the City. However, they are providing the Council with their thoughts on how they will proceed with the property they own and control. He felt that the Council needs to consider whether or not it wishes to change the adopted objectives in light of all the things that have taken place in the past four years. He clarified that the November 2003 objectives presented by the Foundation were not adopted by the Council.

Council Member Tate agreed with the objective as stated by Mayor Pro Tempore Sellers. However, he did not believe that the City was there yet. He stated that the City has made a sizeable investment in

medical services in Morgan Hill. Until the City starts seeing a return on that investment, he did not believe the Council should let go so easily. He noted that the Council has measurable objectives that indicate that there will be some return on investment.

Mayor Kennedy felt that the three documents need to be cleaned up. He agreed that the Council needs to clarify its policy objectives, taking the three documents and updating the Council's policy objectives based on what has been presented.

Council Member Chang referred to the long term objectives. She noted that an objective addresses the acute care hospital. In looking at the DePaul blue sheet, page 2, she felt that it is their long term plan to have an acute care hospital within the next 5-7 years. She requested clarification of this objective

Mayor Kennedy recommended that the Council ask staff to put the information together and bring the documents back to the Council.

Mayor Pro Tempore Sellers felt that the objectives can be reviewed by representatives of the Healthcare Foundation and the Council Medical Services Subcommittee, returning to the Council with a recommendation.

City Manager Tewes indicated that he would work with the Council Medical Services Subcommittee. He said that it may be appropriate to take all the information back to the Medical Services subcommittee, returning to the entire Council with a recommendation.

Council Member Carr said that it might be helpful if staff and the medical subcommittee reviewed the salmon sheet point by point and tell the Council how the Foundation is suggesting changing each one of the objectives and how DePaul's plan tries to achieve these objectives. If the Council's objectives of April 2000 no longer make sense, he recommended that this be stated. He said that there may be objectives that can be eliminated.

Mayor Kennedy indicated that he and Council Member Chang, as alternate, have been attending Foundation meetings. He inquired whether it was acceptable with Council Member Sellers if they can continue with the review of the objectives. Mayor Pro Tempore Sellers agreed to Council Member Chang working with Mayor Kennedy in the review of the objectives.

In response to Council Member Chang's question, Mr. Mueller indicated that the three year period was meant to give the Foundation time to work through understanding when mid-Coyote Valley would develop, what licensure issues would be involved, and the recognition of the fact that if you do not get on with the planning of the acute care facility right of way, it becomes more expensive to accomplish. He said that it is a combination of these three factors that would take three years to get onto the process in order to make a solid judgment. He stated that the Foundation is not giving up on the long term objective of getting an acute care facility. The Foundation is identifying a realistic timeframe of when you can get into solid planning and move forward, recognizing that the facility has a time value. As standards are upgraded and changed, it becomes more difficult. He said that the Foundation found out

that the Catholic Healthcare West had completely delicensed the facility with the State. This raises the bar in terms of getting an acute care center and makes an interim step of outpatient care probable.

Council Member Chang announced that Mr. Mueller has been appointed as the Executive Director of the Morgan Hill Community Health Foundation.

Mr. Mueller informed the Council that a citizens advisory board is working with citizens of Morgan Hill. He stated that the citizens advisory board met and elected officers, indicating that he was selected as chair. He felt that his position would give the city solid representation and shows how serious the O'Connor Board takes citizen input from Morgan Hill in the development of the DePaul Health Center.

**Action:**        *By consensus, the City Council **Received Report***

**27.     REQUEST FOR COUNCIL CO-SPONSORSHIP OF SILICON VALLEY ONE BOOK ONE COMMUNITY READS**

City Clerk Torrez presented the staff report, indicating that last year, Silicon Valley Reads paid \$40 toward this event. However, no commitment to funding has been made to date.

Mayor Kennedy opened the public comment.

Carol O'Hare, representing the Friends of the Morgan Hill Library, Booksmart Bookstore and the Morgan Hill Branch of the American Association of the University of Women, addressed the importance of books and reading. She indicated that the program "Silicon Valley Reads, One Book One Community" was introduced last year. Its purpose is to encourage members of the community to read the same book and then come together to talk about it. She indicated that Silicon Valley Reads chose *Fahrenheit 451*. She said that as this is a community event and that they would like to host the event at the Community Center. She requested that the City of Morgan Hill co-sponsor this event and waive the rental fee for the Community Center for this year's event and for future Silicon Valley Reads events. She stated that the organization has an understanding of the state of the City finances these days. Therefore, the organizations have offered to pay \$100 to help defray the cost of this event.

No further comments were offered.

Council Services & Records Manager Torrez stated that should the Council agree to co-sponsor this event, staff recommends that funding for this event come from the Council's Community Promotion budget.

Mayor Kennedy indicated that with the amount offered from the friends of the Library and others, it would reduce the cost to \$85, to be paid out of the Community Promotion fund.

**Action:**        *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Approved** Request from Silicon Valley Reads for City*

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*Co-sponsorship of Silicon Valley One Book, One Community Reads' Upcoming March 7, 2004 Event. Promoters to pay \$100 toward the event; the remaining \$85 balance to be paid from the Council's Community Promotion account (010-42248-1100).*

Council Services & Records Manager Torrez noted that it has been requested that the Council co-sponsors this event annually. She stated that staff would request Council direction for the purpose of budgeting future years.

Mayor Pro Tempore Sellers stated that it would be appropriate for the group to come back and request co-sponsorship if only to help publicize the event. Therefore, his motion to co-sponsor the event was for this year only.

Mayor Kennedy requested that the Friends of the Library, Booksmart Bookstore and the American Association of University Women return each year for co-sponsorship.

## **28. CITY COUNCIL POLICIES AND GOALS FOR 2004**

City Manager Tewes presented the staff report, indicating that in January 2004, the Council conducted 1.5 days in a goal setting session/retreat. The Council reached tentative conclusions at that retreat and asked staff to return with the tentative decisions in a single document for review, revision and adoption by the Council. He indicated that the Council has been provided with a revised set of policies and goals that incorporates a minor correction. He indicated that there was a reference in the Medical Services Objectives to the wrong foundation; reference should be to the Morgan Hill Community Health Foundation.

Mayor Kennedy requested that an ethics goal be added to read: By December 2004, adopt an ethics policy for City Council and staff.

Council Member Tate suggested that the ethics policy be listed under governance. He stated that the ethics subcommittee met yesterday and that it is working on a plan that will take a considerable amount of commission and staff time.

Council Member Chang referred to the Medical Services Goal and recommended that the timeline be changed to May 18, 2004. She noted that a timeline of February 18, 2004 is listed but that this goal is not yet completed as the medical service goals have been revised.

Mayor Pro Tempore Sellers referred to the flood control goal, noting that the President's current budget eliminates funding for the PL566 project. He stated that he had an opportunity to meet briefly with representatives from Senator Feinstein's office and they have expressed some interest on this issue in the past. He indicated that he would continue to pursue funding with the state director and others. He recommended that the City pursue all avenues as there are significant opportunities to engage the City's current member of congress. He stated that he was disappointed that the City has not seen more

progress to date. He encouraged his colleagues to do what they can to try and reinstate the funding for the PL566, and that it be recommended that the funding be increased, not eliminated.

Mayor Kennedy stated that he and City Manager Tewes met with Congressman Pombo today, indicating that this was the number one item on the agenda. He stated that he intends to fly back to Washington, D.C. to meet with Congressman Pombo who will arrange a meeting with administrative staff to put pressure on the administration and congress to provide this funding. He said that \$940,000 is the amount that the Corp of Engineers would need to continue with this project.

Mayor Pro Tempore Sellers indicated that he would be happy to help schedule meetings with the Senate as well, working with the Mayor and City Manager. He felt that if the city pushes from every possible angle, the City is more likely to succeed in achieving funding.

City Manager Tewes stated that Congressman Pombo is the chair of the Authorizing Committee, a policy committee that establishes policies in the laws and statutes relating to the establishment of the PL566 project. Subsequently, the appropriation committees recommend a budget with earmark appropriations. He said that appropriators and authorizers talk to each other and that any member of congress may request an earmark or a specific line item appropriation. He stated that chances improve with seniority and importance in the leadership of the congress and whether or not you have another committee that the appropriators are interested in.

Mayor Pro Tempore Sellers stated that the same process takes place on the Senate side. Therefore, if the City can work with both sides, the City may have a better chance of funding.

Council Member Carr referred to page 1 of the draft Council Policies and Goals for 2004, City Budget, the first goal contained in the box. He understood that the Council discussed that the Finance & Audit Committee would review the rate of return of the existing business assistance guidelines. He inquired whether the Finance & Audit Committee was the right committee to review the rate of returns or whether it should be the Economic Development Subcommittee who should be tasked to review the rate of returns as it is more familiar with the business assistance guidelines.

Council Member Chang stated that it was her belief that the Economic Development Subcommittee was given the assignment of reviewing the new revenue source options relating to the goal of planning for the Council to consider new revenue option(s). It was her belief that there were two revenue increase items: 1) economic development; and 2) other new revenue options.

Mayor Pro Tempore Sellers indicated that the plan to consider new revenue options was assigned to the Finance & Audit Committee.

Mayor Kennedy felt that Council Member Carr raised a good point. He stated that both committees are working on certain aspects of this issue.

Mayor Pro Tempore Sellers said that the Economic Development Subcommittee looks at what might be an appropriate expectation of a return on any investment the City might make (e.g., loans, etc.). If you look at it in terms of rate of return as a goal, this would be a Finance & Audit Committee issue. However, in this case, it is a guideline of what one expects to receive from an investment of redevelopment funds. He supported turning the responsibility of this goal to the Economic Development Subcommittee. However, the second goal to consider new revenue options belongs with the Finance & Audit Committee.

Council Member Chang felt that the Council adopted two goals for economic development.

Council Member Carr indicated that the Council did not identify a second goal for economic development. He noted that the City Manager has structured the Council's 2004-goals by policy and goals. The Council confirmed, at the goal setting retreat, that the emphasis on economic development is now geared toward the rate of return to the City's general fund instead of having other items as priorities. He clarified that it is not a goal to achieve but that the Council was setting a new priority.

Mayor Kennedy indicated that the goal listed at the top of page 2, Economic Development, is a general goal and does not involve the Finance & Audit Committee or the Economic Development Committee.

Council Member Chang recommended that the Council include an action plan on economic development besides looking at the guidelines and return on investments.

Mayor Kennedy stated his agreement with Mayor Pro Tempore Sellers' suggestion that the first goal should be for the Economic Development Subcommittee rather than the Finance & Audit Committee as it is a rate of return issue on economic development investments.

City Manager Tewes indicated that the goal came from the context of a discussion about how the City would use general fund reserves. He stated that the Council earlier indicated that the City would be able to use some reserves to help balance the budget. However, there was a level of reserves that the Council indicated it would make available for certain kinds of economic development provided it had an appropriate rate of return. He noted that the City already has a rate of return guidelines for how it uses redevelopment agency assistance. What is new is the potential to use general fund reserves for economic development projects. He said that this was the Council's thinking at the time but that the Council may wish to change this. He indicated that the Council's discussion was about the source of investment; a new policy.

Council Member Chang suggested that more importance be given to the Economic Development Subcommittee. She recommended that a goal be added that would stipulate that the Economic Development Subcommittee is to develop an action plan for additional economic development possibilities. She noted that the Council is hoping to achieve an increase of revenue by \$800,000. She felt that the City needs to look at all avenues to achieve this revenue and felt that economic development could be an avenue to accomplish this.

Mayor Kennedy suggested that a sentence be added that reads “Develop an action plan to achieve this objective by the Economic Development Subcommittee.”

Council Member Carr noted that the Council has an existing economic development action plan. He stated that the Economic Development Subcommittee developed a strategy and that it has been discussed at Council workshops and other avenues. It was his understanding that Council Member Chang’s goal is to increase the activity and speed up some of the items the City is working on.

Council Member Chang recommended that the Council relook at the action plan. Should the City continue to pursue the program that is in place, she did not believe that the City would be able to increase revenues.

Council Member Tate stated that in order to implement the economic development policy contained at the top of the second page, you would have to have the kind of action plan that Council Member Chang is addressing.

Mayor Kennedy inquired whether a timeline should be identified for the economic development committee. Based on Council Member Tate’s comment that the committee is working on project management on the overall goals, this goal is to be left open ended.

**Action:**        *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Adopted** the City Council Policies and Goals for 2004, as amended by the City Council.*

## **29.     CITY POSITION ON PROPOSITION 56, 57, AND 58**

Assistant to the City Manager Eulo presented the staff report, indicating that at the last Council meeting, the Legislative Subcommittee did not recommend that the Council take a position on State wide Propositions 55, 56, 57 and 58. Subsequent to that meeting, Mayor Kennedy requested that three propositions (56, 57 and 58) be brought back for full discussion by the Council. He indicated that the Legislative Subcommittee carefully considered the three propositions and had opinions about them but did not feel that they rose to the level of direct impact on City government that the City normally takes position on. He said that the secondary impacts were difficult to ascertain as to whether they would be positive or negative to City government. Therefore, it was hard to recommend support or opposition to the propositions.

Mayor Kennedy lobbied support to propositions 56, 57 and 58. He stated that if Propositions 57 and 58 do not pass; the impacts on cities and counties would be devastating based on cuts that would need to be made. He felt that it was important that the public be made aware about the impacts to the City. He indicated that Steve Wesley and the Governor are actively pushing to get these two propositions passed. He stated that it was his understanding, having heard Greg Larson’s presentation, that the impacts on local government would be draconian and that significant cuts would need to be made. He did not believe that the State has a choice other than to borrow against the future. He felt that it was important



that the public be made aware of the terrible impacts that would occur to the City and that the City has a tremendous amount at stake. He felt that it was imperative that the Council take a strong position and support the three propositions.

Council Member Tate did not know whether the Council should take a position on the propositions. He indicated that he has already voted. He stated that he voted for the propositions because it is a direct impact that would fall upon the City and that it was a defense mechanism. He said that he found it appalling that the State would borrow to pay debt but that he could not get away from what could happen to the City if the propositions fail.

Council Member Chang indicated that the Cities Association requested that the City take a position on the propositions. She advised the Cities Association that the City was not taking a position on the propositions.

Council Member Carr stated that the Cities Association does not get to dictate what the City should do. He stated that he heard the same presentations that Mayor Kennedy heard. He agreed that if proposition 57 does not pass that cuts would be severe. However, he felt that this is a terrible way to legislate because the alternative of what the State will do is worse. He stated that he did not know how he will vote on the propositions. He noted that this is the only choice that the State has given the voters. He pointed out that the funding mechanism to pay off the deficit bonds will take revenue from the City. He noted that the Council just adopted goals that talk about a strategy that places a greater emphasis on the sales tax into the City's general fund. He stated that the passage of proposition 57 would take away some of the sales taxes to pay off the deficit bonds that will be in place for many years. In 7-10 years, the State may have to look at tax increases to help pay for items that should be done today to get the State out of the deficit it is currently in. He stated that he sees both sides of the proposition but that he was disappointed that the voters have terrible options. This is why he was not comfortable asking the City to take a public position on the proposition when he was not sure how he will vote on the position(s).

City Manager Tewes indicated that as drafted, the proposition is proposed to be revenue neutral. The State would take away  $\frac{1}{4}$  of one cent in sales tax and replace it with an equivalent amount of property tax revenue. However, there is a question on how each of these sources will grow in the future.

Mayor Pro Tempore Sellers said that there was disagreement within the legislative committee about whether proposition 57 was positive or negative. He has strong feelings about proposition 56 in terms of whether there are dire impacts to the City. The legislative subcommittee kept coming back to whether the propositions directly impacted the City. He said that proposition 57 could be argued both ways; that it can be a positive or negative impact. Proposition 58 is a companion bill and could be argued both ways as well. The two issues faced by the legislative committee was the ambiguity in terms of not being sure as to the positive and negative impacts. He agreed with Mayor Kennedy that proposition 57 is horrible unless you consider the options. If the Council, as a whole, wants to state that a majority wants to weigh in a stand on the proposition, he would not be averse to taking that action.

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**Action:**        *Mayor Kennedy made a motion, seconded by Council Member Chang, to endorse propositions 57 and 58, taking a position in support of these two propositions.*

Mayor Kennedy felt that it was important to send a message to the public that propositions 57 and 58 are important to cities. He stated that he understood the downsides to the propositions, but that they are the lesser of evils. He felt that the City needs to support these propositions.

**Vote:**        *The motion carried 4-1 with Council Member Carr voting no.*

Council Member Carr said that he does not know how he will vote on these propositions. Therefore, he could not commit the City to the propositions publicly.

Mayor Pro Tempore Sellers indicated that he knows how he will be voting on the propositions.

**Action:**        *Mayor Kennedy made a motion to support Proposition 56. The motion died for the lack of a second.*

Mayor Kennedy opened item 29 to public comment.

Shawna Boykin, government relations director, representing the South County Division of the Santa Clara Association of Realtors, informed the Council that she would be attending future Council meetings. She will be inviting the Council, on an individual basis, to attend the local government relations committee meeting and speak to this committee. She informed the Council that the California Association of Realtors and the local Realtors Association have voted in favor of supporting propositions 57 and 58. She indicated that the Realtors Association looked at the propositions and found that if they do not support the propositions, real estate will be hit hard, noting that an affordable housing issue currently exists. She said that realtors are concerned about having more burden being placed on homeowners as far as taxes are concerned. She also informed the Council that the Board has voted to support the initiative to help put funds back into local cities that the League of California Cities is proposing be placed on the November 2004 ballot.

**30.    REQUEST TO CONSIDER THE REDEVELOPMENT AGENCY FEBRUARY 25, 2004 MEETING**

Mayor Kennedy indicated that he will be out of country next week and that if there are no pressing issues, he requested that the February 25, 2004 meeting be cancelled.

Council Member Tate did not believe that it would be a fair trade off for the Council to cancel the February 28 meeting only to have a heavy agenda on March 3.

Council Member Chang stated her support of canceling the February 25 meeting.

City Manager Tewes informed the Council that the February 25 meeting would have a series of routine items, mainly consent calendar items. This would result in adding these consent items to the March 3 consent calendar.

Council Member Tate stated that if all that is being added to the March 3 meeting is consent items, he would not object to canceling the February 25 meeting.

Council Member Carr indicated that there are certain times during the year (e.g., beginning of the year and the summer) where the Council cancels a couple of meetings to accommodate personal business. He felt that the Council needs to do a better job of sticking to the meeting schedule. He indicated that he is available to meet on February 25, if a meeting is to be held.

**Action:**        *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Chang, the City Council unanimously (5-0) **Cancelled** the February 25, 2004 Redevelopment Agency Meeting.*

#### **FUTURE COUNCIL-INITIATED AGENDA ITEMS**

Discussion of the Economic Development Subcommittee rotation schedule (Council Member Tate for the March 3, 2004 meeting)

#### **RECONVENE TO CLOSED SESSION**

Mayor/Chairman/President Kennedy adjourned the meeting to Closed Session at 10:25 p.m. to discuss “public employee performance evaluation.”

#### **RECONVENE**

Mayor/Chairman/President Kennedy reconvened the meeting at 10:47 p.m.

#### **CLOSED SESSION ANNOUNCEMENT**

Mayor/Chairman Kennedy announced that no reportable action was taken in closed session.

#### **ADJOURNMENT**

There being no further business, Mayor/Chairman/President Kennedy adjourned the meeting at 10:48 p.m.

#### **MINUTES RECORDED AND PREPARED BY:**

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**IRMA TORREZ, CITY CLERK, AGENCY/COMMISSION SECRETARY**



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: March 3, 2004***

### **DEVELOPMENT AGREEMENT APPLICATION DA 03-13: MISSION VIEW DR.-MISSION RANCH**

#### **RECOMMENDED ACTION(S):**

Open/close Public Hearing  
Waive the First and Second Reading of Ordinance  
Introduce Ordinance

#### **EXECUTIVE SUMMARY:**

The applicant is requesting approval of a project development agreement for 38 single family homes within the Mission Ranch project located on the south east corner of the intersection of Cochrane Rd. and Mission View Dr. The proposed development agreement would cover phases 7, 8 & 9 of the Mission Ranch project.

The Mission Ranch project first received building allocations in the 1996 MP competition. In April 2002, the City Council approved an RPD plan for the 98 acre Mission Ranch project.

In April 2003, the Mission Ranch project was awarded a total of 38 building allocations (11 for FY 2004-05, 15 for FY 2005-06 and 12 for FY 2006-07) as part of the 2002 MP competition. To date 179 allocations have been granted to the Mission Ranch project.

Project development agreements are required as a formal contract between the developer and the City. The development agreement formalizes the commitments made during the MP process and the development schedule for the project. The development agreement for 38 allotments awarded in the 2002 competition has been completed and is attached as Exhibit A. The 2002 MP commitments and a development processing schedule have been included within the agreement. The public and private improvements required with the 38 allotments have been included within the agreement (paragraph 14).

This application was reviewed by the Planning Commission at their January 27 meeting, at which time the Commission voted 6-0 to recommend approval of the proposed development agreement as prepared. The Planning Commission staff report and minutes are attached for Council's reference.

**FISCAL IMPACT:** No budget adjustment required

**Agenda Item # 12**

**Prepared By:**

**Senior Planner**

**Approved By:**

**Director of Community  
Development**

**Submitted By:**

**City Manager**

**ORDINANCE NO.       , NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF MORGAN HILL APPROVING  
DEVELOPMENT AGREEMENT APPLICATION DA-  
03-13 FOR APPLICATION MP 02-15: MISSION VIEW  
DR.-MISSION RANCH (APN 728-32-008 & 009)**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY  
ORDAINS AS FOLLOWS:**

**SECTION 1.** The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

**SECTION 2.** The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

**SECTION 3.** The Planning Commission, pursuant to Title 18, Chapter 18.78.125 of the Municipal Code and Resolution No. 03-17a & b, adopted May 27, 2003, has awarded allotments to that certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MP 02-15: Mission View-Mission Ranch	38 Single-Family Homes

**SECTION 4.** References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill. These documents to be signed by the City of Morgan Hill and the property owner set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

**SECTION 5.** The City Council hereby finds that the Residential Development Agreement and Development Proposal approved by this ordinance are compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

**SECTION 6.** Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

**SECTION 7.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

**SECTION 8.** Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 3<sup>rd</sup> Day of March 2004, and was finally adopted at a regular meeting of said Council on the 17<sup>th</sup> Day of March 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

**AYES:            COUNCIL MEMBERS:**  
**NOES:          COUNCIL MEMBERS:**  
**ABSTAIN:      COUNCIL MEMBERS:**  
**ABSENT:       COUNCIL MEMBERS:**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Irma Torrez, City Clerk

\_\_\_\_\_  
Dennis Kennedy, Mayor

**∞ CERTIFICATE OF THE CITY CLERK ∞**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA,** do hereby certify that the foregoing is a true and correct copy of Ordinance No. , New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 17<sup>th</sup> Day of March 2004.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE:\_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE:** *March 3, 2004*

### **ANNEXATION APPLICATION, ANX-01-01: CAMPOLI - COX**

#### **RECOMMENDED ACTION(S):**

1. Open/close Public Hearing
2. Adopt Resolution for Annexation

#### **EXECUTIVE SUMMARY:**

The applicant requests to annex four (4) parcels totaling 3.23 acres into the City of Morgan Hill. The project site is located north of Campoli Drive and west of Old Monterey Road. The subject parcels currently abut the Morgan Hill City boundary on the north and east sides and are located within the City's Urban Service Boundary. Therefore, inclusion of the parcels into the City limits would represent a logical adjustment of the City's boundary. Existing water and sewer lines are available within the site vicinity, and are of sufficient size to service future development of the site. The project site is also within the established response time for fire service.

On May 8, 2001, the Planning Commission unanimously recommended approval of the annexation and rezoning of R-1 (7000) Single-family Low Density Residential, subject to Conditions of Approval. On October 3<sup>rd</sup>, 2001, City Council voted unanimously (5-0) to approve the rezoning request; however, action on the annexation was deferred until such time as the applicant had complied with all Conditions of Approval as established by Planning Commission Resolution No. 01-20. The County Surveyor's and Assessor's Offices have now certified the annexation map and legal description and all code violations have been remediated. The applicants have also entered into Pre-Annexation Agreements with the City. Copies of the Planning Commission resolution, staff report and minutes from the May 8, 2001 meeting are attached for the Council's reference.

Considering that the proposed annexation represents a logical adjustment of the City's boundary, City infrastructure and services are available, staff supports the annexation.

**FISCAL IMPACT:** None. Filing fees were paid to the City to cover the cost of processing this application.

#### Attachments:

1. Exhibit "A": Legal Description
2. Exhibit "B": Annexation Map
3. Council Resolution
4. PC Resolution No. 01-20 (Annexation)
5. PC Staff Report, Minutes (5/8/01)

Agenda Item # 13

Prepared By:

Planning Consultant

Approved By:

Community  
Development Director

Submitted By:

City Manager

## **RESOLUTION NO. \_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL MAKING DETERMINATIONS AND APPROVING THE REORGANIZATION OF CERTAIN TERRITORY DESIGNATED “MADRONE ANNEXATION No. 10”, APPROXIMATELY 3.23 ACRES LOCATED BETWEEN OLD MONTEREY ROAD (MADRONE ROAD) AND HALE AVENUE AND NORTH OF CAMPOLI DRIVE, AND WITHDRAWAL OF SAID TERRITORY FROM THE SOUTH SANTA CLARA COUNTY FIRE PROTECTION DISTRICT. (APNs 764-24-6, 7, 8, and 9)**

**WHEREAS**, a written petition has been filed in the office of the City Clerk of the City of Morgan Hill in accordance the provisions of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, annexing into the City of Morgan Hill certain territory located in the County of Santa Clara, State of California, designated as “Madrone Annexation No. 10” and as shown and described in attached Exhibits “A” & “B”, incorporated herein by reference; and

**WHEREAS**, said petition has been signed and consented to by Warren Cox and Michael Barger, the owners of the land in the territory proposed to be annexed; and

**WHEREAS**, Government Code Section 56663(a) provides that if a petition for annexation is signed by all owners of land within the affected territory, the City Council may approve or deny the annexation without public hearing; and

**WHEREAS**, evidence was presented to the City Council;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, RESOLVES AS FOLLOWS:**

**SECTION 1:** The City Council of the City of Morgan Hill is the conducting authority pursuant to Section 56757 of the Government Code for the annexation of property designated “Madrone Annexation No. 10”, more particularly described in Exhibits “A” and “B”;

**SECTION 2:** Pursuant to Sections 56800 and 56828 of the California Government Code, the City Council of the City of Morgan Hill hereby annexes to the City of Morgan Hill the uninhabited territory particularly described in the attached Exhibit “A”, which is incorporated herein by reference, and hereby designated as “Madrone Annexation No. 10”.

**SECTION 3:** The territory is hereby withdrawn from the South Santa Clara County Fire Protection District in accordance with Section 13952 of the California Health and Safety Code (APNs 764-24-6, 7, 8, and 9).



**SECTION 4:** The following Findings are made by the City Council of the City of Morgan Hill:

- a. The said territory is uninhabited and comprised of approximately 3.23 acres.
- b. The said territory is within the City's Urban Service Area as adopted by the Local Agency Formation Commission of Santa Clara County.
- c. The annexation is consistent with the orderly annexation of territory within the City's Urban Service Area and is consistent with the City policy of annexing when all city services can be provided.
- d. This annexation has been found to be exempt from the California Environmental Quality Act in accordance with Section 15319(a) (Annexations of Existing Facilities and Lots for Exempt Facilities).
- e. The County Surveyor has determined the boundaries of the proposed annexation to be definite and certain, and in compliance with the Commission's road annexation policies.
- f. The said territory is within the City's Urban Growth Boundary.
- g. The proposed annexation does not create islands or areas in which it would be difficult to provide municipal services.
- h. The proposed annexation does not split lines of assessment or ownership.
- i. The proposed annexation is consistent with the General Plan.
- j. The said territory to be annexed is contiguous to existing City limits.
- k. The Planning Commission on May 8, 2001, enacted Resolution No. 01-19 recommending pre-zoning the subject territory with an R-1 (7000), Single family Low Residential zoning designation.
- l. The Planning Commission on May 8, 2001, enacted Resolution No. 01-20 recommending reorganization of the subject territory.
- m. The applicant and City have complied with all conditions for annexation imposed by the Planning Commission.

**PASSED AND ADOPTED** by the City Council of Morgan Hill at a Regular Meeting held on the 3<sup>rd</sup> Day of March, 2004 by the following vote.

**AYES:**

**NOES:**

**ABSTAIN:**

**ABSENT:**

**COUNCIL MEMBERS:**

**COUNCIL MEMBERS:**

**COUNCIL MEMBERS:**

**COUNCIL MEMBERS:**

**🦉 CERTIFICATION 🦉**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA,** do hereby certify that the foregoing is a true and correct copy of Resolution No. \_\_\_\_\_, adopted by the City Council at a Regular Meeting held on March 3, 2004.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

**DATE:** \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE: March 3, 2004**

### **ZONING AMENDMENT, SUBDIVISION, & DEVELOPMENT AGREEMENT, ZA-03-15/SD-03-13/DA-03-12: PEET-LUPINE**

#### **RECOMMENDED ACTION(S):**

1. Open/close Public Hearing
2. Waive the First and Second Reading of Zoning Amendment Ordinance
3. Introduce Zoning Amendment Ordinance
4. Adopt Subdivision Resolution, upholding the Commission's decision
5. Waive the First and Second Reading of Development Agreement Ordinance
6. Introduce Development Agreement Ordinance

**EXECUTIVE SUMMARY:** The applicant is requesting approval of a zoning amendment, subdivision and development agreement for a 90-unit single-family project located at the northeast corner of Cochrane Road and Peet Road. The project, referred to as Alicante Estates, was awarded 38 building allotments under the 2002 Measure P Competition. The 38 allotments are spread out over a period of three fiscal years: 11 units in FY 2004-05, 15 units in FY 2005-06, and 12 units in FY 2006-07. Three replacement units will also be constructed during Phase 1 (FY 2004-05) of the project.

The development agreement formalizes the commitments made during the Measure P process and establishes the development schedule for the project. The project specific commitments are identified in Paragraph 14 of the development agreement, and the development schedule is contained in Exhibit B.

The project site is currently zoned R-1(12,000). The applicant is requesting approval for a Residential Planned Development (RPD) overlay zone to allow flexibility in the development standards and to adopt a precise development plan for the site. Specifically, the applicant is requesting approval for a reduction in lot size for seven of the BMR units and a reduction in setbacks for 51 of the 90 total units. The RPD overlay is also requested to allow for the implementation of 'Modified Setback Dwellings', or attached dwellings physically separated but architecturally connected to give the appearance of attachment.

The Commission reviewed the applicant's request at the January 27 meeting. During the Commission meeting, a neighboring resident spoke in opposition to certain components of the project, including the installation of sound walls along Cochrane and Peet Roads, the widening of Cochrane Road to collector standards, and the connection of an interior roadway to Cochrane Road. After lengthy discussion, the Commission required the following: 1) elimination of the sound walls along the project frontages; in lieu of sound walls, alternate noise attenuating measures shall be implemented, 2) widening of Cochrane Road to collector standards, consistent with the General Plan, and 3) inclusion of a street connection to Cochrane Road. The Commission voted unanimously to recommend approval of the zoning amendment and subdivision, and voted 6-1 to recommend approval of the development agreement. A copy of the January 27 staff report and minutes are attached for the Council's reference.

A letter identifying the concerns of the neighboring resident is attached to this report. It is Staff's consensus and recommendation that the Council uphold the Commission's decision to require the roadway connection to Cochrane Road. The street connection will alleviate congestion at the main project entrance off Peet Road, particularly after the public school/park site is developed, improve police 'patrolability' of the neighborhood, and improve fire response times.

**FISCAL IMPACT:** None. Filing fees were paid to the City to cover the cost of processing these applications.

Agenda Item # 14

Prepared By:

Associate Planner

Approved By:

CDD Director

Submitted By:

City Manager

**ORDINANCE NO.**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A RESIDENTIAL PLANNED DEVELOPMENT AND PRECISE DEVELOPMENT PLAN FOR A 90-UNIT SINGLE-FAMILY PROJECT LOCATED AT THE NORTHEAST CORNER OF COCHRANE RD AND PEET RD (APNs 728-34-002 & -003) (ZA-03-15: PEET - LUPINE)**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:**

- SECTION 1.** The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.
- SECTION 2.** The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.
- SECTION 3.** An environmental initial study has been prepared for this application and has been found complete, correct and in substantial compliance with the requirements of California Environmental Quality Act. A mitigated Negative Declaration was filed with the associated annexation application.
- SECTION 4.** The City Council finds that the proposed RPD Overlay District is consistent with the criteria specified in Chapter 18.18 of the Morgan Hill Municipal Code.
- SECTION 5.** The City Council hereby approves a precise development plan as contained in that certain series of documents date stamped January 21, 2004, on file in the Community Development Department, entitled "Alicante" prepared by MH Engineering. These documents, as amended by site and architectural review, show the location and sizes of all lots in this development and the location and dimensions of all proposed buildings, vehicle and pedestrian circulation ways, recreational amenities, parking areas, landscape areas and any other purposeful uses on the project.
- SECTION 6.** Approval of the Alicante Estates RPD and precise development plan shall allow the deviations identified in the list of Approved Deviations attached hereto as Exhibit "A", and by this reference incorporated herein.
- SECTION 7.** Two modified setback dwellings are allowed in Phase 1 (FY 2004-05) of the project, and four modified setback dwellings are allowed in Phase 2 (FY 2005-06) if building permits are obtained by June 30, 2005. Additional modified setback dwellings are allowed in future phases as identified on the precise development plan on file at the Community Development Department, subject

to the extension of Ordinance No. 1641. In the event the City Council does not extend Ordinance No. 1641, the modified setback dwellings proposed in Phase 3 and beyond shall be constructed as physically attached units.

**SECTION 8.** The project shall comply with the provisions of Ordinance No. 1641 for the modified setback dwellings.

**SECTION 9.** With the exception of the deviations allowed under Sections 6 through 8 of this Ordinance, buildout of the Alicante Estates project shall comply with the site development standards of the R-1(12,000) zoning district. Any additions/modifications to the approved building plans shall also comply with the site development standards of the R-1(12,000) zoning district.

**SECTION 10.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

**SECTION 11.** Effective Date; Publication. This Ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 3<sup>rd</sup> Day of March 2004, and was finally adopted at a regular meeting of said Council on the 17<sup>th</sup> Day of March 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

**AYES:**           **COUNCIL MEMBERS:**  
**NOES:**           **COUNCIL MEMBERS:**  
**ABSTAIN:**   **COUNCIL MEMBERS:**  
**ABSENT:**       **COUNCIL MEMBERS:**

**ATTEST:**

**APPROVED:**

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**Irma Torrez, City Clerk**

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**Dennis Kennedy, Mayor**

**∞ CERTIFICATE OF THE CITY CLERK ∞**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA,** do hereby certify that the foregoing is a true and correct copy of Ordinance No. \_\_\_\_, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 17<sup>th</sup> Day of March 2004.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE: \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**

## EXHIBIT A APPROVED DEVIATIONS

Phase	Lot #	Front	Left	Right	Rear	Lot Size	Comments
1	1	23.3	--	--	--	--	
1	4	20	--	--	--	--	
1	6	20	--	--	--	--	
1	9	20	10	--	--	--	
1	10	20	--	--	--	--	
1	11	23.8	--	3	--	5,570 sf	BMR
1	12	24	--	--	3	--	MR
1	14	20	10	--	--	--	
2	1	24	--	--	3	--	MR
2	2	23.4	--	3	--	5,723 sf	BMR
2	4	20	--	--	--	--	
2	5	20	--	--	--	--	
2	8	20	--	--	--	--	
2	9	20	--	--	--	--	
2	10	20	--	--	--	--	
2	11	23.8	--	3	--	5,570 sf	BMR
2	12	24	--	--	3	--	MR
2	14	20	--	--	--	--	
3	5	20	--	--	--	--	
3	7	30.7	--	--	3	--	MR
3	8	18.7	--	3	--	5,992 sf	BMR
3	9	20	--	--	--	--	
3	10	20	--	--	--	--	
3	11	16	--	--	--	--	
3	12	20	--	--	--	--	

Phase	Lot #	Front	Left	Right	Rear	Lot Size	Comments
Future	F-4	21	--	--	--	--	
Future	F-5	20	--	--	--	--	
Future	F-11	--	--	--	3	--	MR
Future	F-12	--	--	3	--	--	BMR
Future	F-13	20	--	--	--	--	
Future	F-16	--	6	3	--	5,552 sf	BMR
Future	F-17	15	--	--	3	--	MR
Future	F-21	20	--	--	--	--	
Future	F-23	20	--	--	--	--	
Future	F-25	20	--	--	--	--	
Future	F-27	20	--	--	--	--	
Future	F-30	20	--	--	--	--	
Future	F-32	16.2	--	3	--	--	BMR
Future	F-33	24.6	--	--	3	--	MR
Future	F-34	--	10	--	--	--	
Future	F-35	20	--	--	--	--	
Future	F-37	20	--	--	--	--	
Future	F-38	15.6	--	3	--	5,040 sf	BMR
Future	F-39	--	--	--	3	--	MR
Future	F-40	20	--	10	--	--	
Future	F-41	20	--	--	--	--	
Future	F-43	20	--	--	--	--	
Future	F-45	20	--	--	--	--	
Future	F-47	20	--	--	--	--	
Future	F-48	20	--	3	--	5,520 sf	BMR
Future	F-49	--	--	--	3	--	MR

Notes:

1. Setback dimensions are identified in feet.
2. Wing walls shall be a minimum of 3 feet from property lines.
3. BMR and MR units shall comply with Ordinance No. 1641 for modified setback dwellings.
4. Alternate Custom Lots for Phases 2 and beyond shall be designated in writing and submitted to the Planning Division prior to tentative map approval of the appropriate phase of development. Custom lot units shall meet all site development standards of the R-1(12,000) zoning district.
5. Project Breakdown: Phase 1 = 14 units (11 Measure P units, plus 3 replacement units); Phase 2 = 15 Measure P units; Phase 3 = 12 Measure P units; Future Phases = 49 Measure P units; Total Project = 90 homes (including 9 BMR and 9 MR units)
6. Only those deviations listed above are approved for the RPD. Setbacks and lot sizes not specifically called out shall comply with the site development standards of the R-1(12,000) zoning district.
7. Future building additions are prohibited in any yard (front, rear, side) for which a reduced setback was approved by this RPD, unless the additions comply with the site development standards of the R-1(12,000) zoning district.



**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL UPHOLDING PLANNING COMMISSION RESOLUTION NO. 04-11, APPROVING A 38-LOT SUBDIVISION (PHASES 1, 2, AND 3) OF AN OVERALL 90-UNIT PROJECT LOCATED AT THE NORTHEAST CORNER OF COCHRANE ROAD AND PEET ROAD IN A R-1(12,000)/RPD ZONING DISTRICT (APNs 728-34-002 & -003) (SD-03-13: PEET – LUPINE)**

**WHEREAS**, such request was considered by the City Council at their regular meeting of March 3, 2004, at which time the City Council upheld Resolution No. 04-11 for subdivision application SD-03-13: Peet - Lupine; and

**WHEREAS**, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

**NOW, THEREFORE, THE MORGAN HILL CITY COUNCIL DOES RESOLVE AS FOLLOWS:**

**SECTION 1.** The approved project is consistent with the Zoning Ordinance and the General Plan.

**SECTION 2.** An environmental initial study has been prepared for this application, and has been found complete, correct and in substantial compliance with the requirements of the California Environmental Quality Act. A mitigated Negative Declaration was filed with the associated annexation application.

**SECTION 3.** The proposed subdivision will not result in a violation of the requirements established by the Regional Water Quality Control Board.

**SECTION 4.** The approved project shall be subject to the conditions as identified in the set of standard conditions attached hereto as Exhibit “A” and as identified in Planning Commission Resolution No. 04-11, adopted January 27, 2004, and by this reference incorporated herein.

**PASSED AND ADOPTED** by the City Council of Morgan Hill at a Regular Meeting held on the 3<sup>rd</sup> Day of March, 2004 by the following vote.

<b>AYES:</b>	<b>COUNCIL MEMBERS:</b>
<b>NOES:</b>	<b>COUNCIL MEMBERS:</b>
<b>ABSTAIN:</b>	<b>COUNCIL MEMBERS:</b>
<b>ABSENT:</b>	<b>COUNCIL MEMBERS:</b>

**🏛 CERTIFICATION 🏛**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA**, do hereby certify that the foregoing is a true and correct copy of Resolution No. , adopted by the City Council at a Regular Meeting held on March 3, 2004.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

**DATE:** \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**

**A F F I D A V I T**

I, **Dick Oliver**, applicant, hereby agree to accept and abide by the terms and conditions specified in this resolution.

\_\_\_\_\_  
**Dick Oliver, Applicant**

\_\_\_\_\_  
Date

**ORDINANCE NO.**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT FOR APPLICATION MP-02-12: PEET – LUPINE INVESTORS/BORELLO (APNs 728-34-002 & -003) (DA-03-12: PEET - LUPINE)**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

**SECTION 2.** The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

**SECTION 3.** The Planning Commission, pursuant to Title 18, Chapter 18.78.125 of the Municipal Code and Resolution Nos. 03-17a and 03-17b, adopted May 27, 2003, has awarded allotments to a certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MP-02-12: Peet – Lupine Investors/Borello	11 units (Fiscal Year 2004-05)
	15 units (Fiscal Year 2005-06)
	12 units (Fiscal Year 2006-07)

**SECTION 4.** References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill.

These documents to be signed by the City of Morgan Hill and the property owner set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

**SECTION 5.** The City Council hereby finds that the development proposal and agreement approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

**SECTION 6.** Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

**SECTION 7.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

**SECTION 8.** Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 3<sup>rd</sup> Day of March 2004, and was finally adopted at a regular meeting of said Council on the 17<sup>th</sup> Day of March 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

**AYES: COUNCIL MEMBERS:**  
**NOES: COUNCIL MEMBERS:**  
**ABSTAIN: COUNCIL MEMBERS:**  
**ABSENT: COUNCIL MEMBERS:**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Irma Torrez, City Clerk

\_\_\_\_\_  
Dennis Kennedy, Mayor

**∞ CERTIFICATE OF THE CITY CLERK ∞**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA,** do hereby certify that the foregoing is a true and correct copy of Ordinance No. , New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 17<sup>th</sup> Day of March 2004.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE:\_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**



## **REDEVELOPMENT AGENCY MEETING**

**DATE:** *March 3, 2004*

### **EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT (ERN) WITH EL TORO BREWING**

**Agenda Item # 15**

**Approved By:**

**BAHS Director**

**Submitted By:**

**Executive Director**

**RECOMMENDED ACTION(S):** Accept the recommendations and provide direction to staff, as needed.

**EXECUTIVE SUMMARY:** On January 21, 2004, the Redevelopment Agency (Agency) selected El Toro Brewing Company as the developer for a restaurant/brew pub in the police building at 17605 Monterey Road. At that meeting, the Agency approved key milestones for performance and established baseline business terms which were not to be negotiable. Since that time, staff has met with El Toro Brewing twice to discuss the ERN. The draft ERN was delivered to El Toro on February 12, 2004. At our last meeting, El Toro indicated they found some terms of the ERN to be unacceptable. For the most part, staff considers most of the requested revisions to be minor with the exception of the acceptance of the property "As-Is." However, we have resolved most of these issues with El Toro and are recommending the following in response to El Toro's concerns (refer to the attached letter):

1) El Toro expressed concerns that limiting their out-of-pocket expenses to \$20,000 would be unreasonable given that the Agency could terminate the ERN without cause. We have revised the ERN to provide that the Agency can only terminate for cause (e.g., failure of Developer to meet the performance milestones) which renders the reimbursement issue moot.

2 & 3) El Toro's position is that the \$650,000 purchase price was conditioned on all fees and permits being waived for the project. Although that was not what the Agency agreed to, we indicated to El Toro that the project would not be subject to impact fees because it is in a CC&R zone in the downtown area. El Toro was previously unaware of this fee exemption and has indicated with this knowledge that they would not request any fee waivers or assistance to pay fees. However, El Toro continues to assert that a purchase price higher than \$650,000 would allow them to request additional assistance from the Agency. The current direction from the Agency is that staff may negotiate a higher purchase price if the project economics support such an increase, however, the purchase price cannot be lower than \$650,000 and no additional assistance would be requested from the Agency. El Toro would also like a timeframe by which the Agency would determine if a higher price is warranted. We believe 60 days would be reasonable since that coincides with the due diligence period.

4) We have deleted reference to a limited partnership.

5) El Toro has environmental concerns about accepting the property "As Is." Their proposed solution is unacceptable to the Agency. However, we agreed on an alternative solution. El Toro will conduct a Phase II environmental study (Study) on the site during the ERN period. As the Agency will benefit from the Study, we are recommending that the Agency share in 50% of the cost with a limit of \$4,000. Depending on the Study findings, we are recommending that El Toro would have the following options: a) decide to accept the property "As Is," b) terminate the ERN without penalty, or c) try to negotiate a reduction in price/ additional assistance based on the findings in the Phase II study. However, if we could not reach agreement, the ERN could be terminated by either party or would expire in 120 days with no penalty to either party.

6 & 7) We find their request reasonable and have revised the ERN accordingly.

8) We are currently considering the expiration of the indemnification clause when the ERN terminates.

The Council's Economic Development (ED) Subcommittee was specifically consulted with regard to items 1, 2, 3 and 5. The other items were considered minor revisions by staff to the boilerplate ERN.

**FISCAL IMPACT:** None at this time.



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: March 3, 2004***

### **AN ORDINANCE ADDING SECTION 1.18.055 TO THE MUNICIPAL CODE DEFINING RECOVERABLE COSTS OF ABATEMENT FOR NUISANCES**

#### **RECOMMENDED ACTION(S):**

1. Waive the first and second reading of the ordinance.
2. Introduce the ordinance.

#### **EXECUTIVE SUMMARY:**

In the course of processing nuisance abatement actions, the City often incurs substantial costs. These may include, depending on the complexity of the case, staff time, administrative fees and costs, court fees and costs, and outside counsel, consultant and/or contractor fees.

Although the Municipal Code currently allows for recovery of “costs of abatement” in nuisance actions through imposition by special assessment, lien, or a lawsuit against the persons maintaining the nuisance, the Municipal Code does not define such costs. The recommended amendment is needed to define such costs.

#### **FISCAL IMPACT:**

No budget adjustment is required.

**Agenda Item # 16**

**Prepared By:**

**Helene Leichter**  
**City Attorney**

**Submitted By:**

**J. Edward Tewes**  
**City Manager**

**ORDINANCE NO. , NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
MORGAN HILL ENACTING SECTION 1.18.055 (Cost of  
Abatement - Definition) OF CHAPTER 1.18 (Abatement of  
Nuisances) OF TITLE 1 (Administration) OF THE MUNICIPAL  
CODE OF THE CITY OF MORGAN HILL REGARDING  
DEFINITION OF COST OF ABATEMENT**

WHEREAS, in the course of processing and abating nuisances, the City often incurs substantial costs, including staff time, administrative fees and costs, and court fees and costs, and outside counsel, consultant and/or contractor fees; and,

WHEREAS, although the Municipal Code currently allows for recovery of “costs of abatement” in nuisance actions through imposition by special assessment, lien, or a lawsuit against the persons maintaining the nuisance, the Municipal Code does not define such costs; and,

WHEREAS, amendment of the Municipal Code is needed to define such costs to allow the City full recovery of the financial impact of remedying nuisances under its ordinances.

NOW THEREFORE, IN CONSIDERATION OF THE FOREGOING, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AND ENACT AS FOLLOWS:

**Section 1.** Section 1.18.055 (Cost of Abatement - Definition) of Chapter 1.18 (Abatement of Nuisances) of Title 1 (Administration) is hereby added to read as follows:

- 1.18.55      Costs of Abatement – Definition. For purposes of this chapter, “cost of abatement” shall include, but is not limited to:
1. Any staff time spent to process, prosecute, or abate said nuisance;
  2. Any costs incurred to process, prosecute, or abate said nuisance;
  3. Any staff time or costs spent to impose a lien or special assessment against the land upon which the nuisance is maintained to recover such time or costs;
  4. Any costs or fees for consultants and/or contractors to perform such tasks; and
  5. Any costs or fees for attorneys to perform such tasks. Recovery of reasonable attorneys' fees shall be limited to those obtainable by the prevailing party, and only in those individual actions or proceedings in which the city elects, at the initiation of that action or proceeding, to seek recovery of its own attorneys' fees.

**Section 2.** **Severability.** Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

**Section 3.**     **Effective Date; Posting.** This ordinance shall take effect thirty (30) days after its second reading. This ordinance shall be posted at City Hall.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 3<sup>rd</sup> Day of March 2004, and was finally adopted at a regular meeting of said Council on the 17<sup>th</sup> Day of March 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

**AYES:**            **COUNCIL MEMBERS:**  
**NOES:**          **COUNCIL MEMBERS:**  
**ABSTAIN:**      **COUNCIL MEMBERS:**  
**ABSENT:**       **COUNCIL MEMBERS:**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Irma Torrez, City Clerk

\_\_\_\_\_  
Dennis Kennedy, Mayor

**⌘ CERTIFICATE OF THE CITY CLERK ⌘**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA,** do hereby certify that the foregoing is a true and correct copy of Ordinance No. , New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 17<sup>th</sup> Day of March 2004.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE: \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**





## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: March 3, 2004***

### **COYOTE VALLEY SPECIFIC PLAN STAKEHOLDER MEETING**

#### **RECOMMENDED ACTION:**

Identify Council representative(s) to participate in stakeholder meeting

#### **EXECUTIVE SUMMARY:**

In August 2002, the City of San Jose initiated a planning process to develop a specific plan for the Coyote Valley area. Last month, a land planning/urban design team was selected to assist in the preparation of the specific plan. The land planning/urban design consultant team will work with the Task Force, the broader community, stakeholders, and technical consultants to arrive at a preferred land use, transportation and open space alternative for the Coyote Valley Specific Plan.

The land planning process is envisioned to occur in three phases: a listening phase, idea phase, and development/refinement phase. As part of the first phase of the process, the listening phase, the consultant team would like to meet with key stakeholders, including the City of Morgan Hill. The purpose of the meeting is to identify any concerns the City of Morgan Hill may have regarding the Specific Plan, and to give us the opportunity to discuss the project directly with the consultants. Representatives from Planning Staff will participate in the stakeholder meeting, as well as two Planning Commissioners. The City Council is requested to identify one or two Council representatives who would be interested in participating in the meeting as well. The City of San Jose would like to conduct the meeting prior to the first scheduled Community Workshop on March 13.

It should be noted that the Morgan Hill Unified School District has also been identified as a key stakeholder. Therefore, they will have the opportunity to express their views and concerns during a separate stakeholder meeting.

**FISCAL IMPACT:** No budget adjustment required.

**Agenda Item # 17**

**Prepared By:**

**Associate Planner**

**Approved By:**

**CDD Director**

**Submitted By:**

**City Manager**



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: March 3, 2004***

**Agenda Item # 18**

**Prepared By:**

**Council Services &  
Records Manager/City  
Clerk**

**Submitted By:**

**City Manager**

### **TITLE: ECONOMIC DEVELOPMENT SUBCOMMITTEE MEMBERSHIP ROTATION**

#### **RECOMMENDED ACTIONS:**

Approve the Mayor's Rotation Appointment to the Economic Development Subcommittee

#### **EXECUTIVE SUMMARY:**

On September 25, 2002, the City Council established a two member Council subcommittee, working with staff, to review specific economic development assistance proposals. Council Members Carr and Tate were appointed to the Economic Development Subcommittee (EDS) with Mayor Pro Tempore Chang serving as alternate. At the May 7, 2003 meeting, the Council adopted the *Economic Development Strategy*. Also, at the May meeting, there was mention of Council rotation to this Economic Development Subcommittee. The EDS members recommended that the membership remain the same as the members were moving forward with implementation of the adopted Economic Development Strategy. The Council agreed to maintain the appointments.

At the Council's February 17, 2004 meeting, Council Member Tate requested that staff agendize appointments to the EDS. Council Member Tate has indicated that the EDS members have moved forward and have made progress with the Downtown Request for Concepts (RFC) and a use for the West Main Police Facility. Therefore, he believes that this would be a good time to transition Council membership to the EDS.

Staff believes that continuation of the EDS would be subject to the Ralph M. Brown Act because the subcommittee is conducting meetings on an ongoing basis. The City Attorney will be available to address this issue at the Council's meeting.

**FISCAL IMPACT:** No fiscal impact.



***CITY COUNCIL STAFF REPORT***  
***MEETING DATE: MARCH 3, 2004***

**Agenda Item # 19**

**Prepared By:**

**(Department Director)**

**Submitted By:**

**City Manager**

**TITLE: URBAN LIMIT LINE STUDY---AMENDMENT OF  
CONTRACT WITH MOORE IACOFANO GOLTSMAN AND  
REALLOCATION OF APPROPRIATED FUNDS**

**RECOMMENDED ACTION(S):** It is recommended that the City Council:

1. Approve an amendment to the contract with Moore Iacofano and Goltsman (MIG) and
2. Authorize use of the Contract's \$20,050 contingency.

**EXECUTIVE SUMMARY:**

On January 15, 2003, the City Council approved a contract with MIG for services associated with the City's Urban Limit Line Study. On February 5, 2003, the City Council appointed an Urban Limit Line (Greenbelt) Study Advisory Committee including Mayor Kennedy as Chair and Council member Chang. The Advisory Committee has met at least monthly since March 2003. The most recent project status report, provided to the Council on November 19, 2003, noted the difficulty the Committee was experiencing in trying to address the issue of an Urban Limit Line and Greenbelt for the flat lands east of Highway 101 and south of San Pedro Avenue.

On November 24, 2003, the Advisory Committee directed staff to investigate the possibility of incorporating into the Study an in-depth study of implementation issues. Part of the challenge to staff was to find a way to undertake the work within the framework of the MIG contract funding approved by the Council. Further discussion of implementation-related issues occurred at the Committee's December 15, 2003 meeting. Staff presented a proposed Implementation Program Scope of Work, including important background information and assumption, at the Committee's January 12 and February 9, 2004 meetings. On February 9<sup>th</sup> the Committee recommended that the City undertake the Implementation Program as part of the Urban Limit Line Study (see Scope of Work incorporated into the attached January 2003 Contract as Exhibit C). The Committee's votes, on two parts of the Scope of Work, were 16-0 and 14-2.

The contract with MIG was approved for \$245,783 including a \$20,050 contingency. Use of the contingency requires City Council approval. The amended contract reduces the contract from \$245,783 to \$225,073. The \$20,710 removed from the MIG contract is allocated to the ULL Study for assistance in evaluating property values (\$3,000) and supplementing Contract Planner funding.

Undertaking the Implementation Program is intended to facilitate the Committee being able to make recommendations for the Urban Limit Line Study. Staff recommends approval of the amended contract as described in the attached Amendment and the Scope of Work for the Implementation Program, Exhibit C in the January 2003 Contract with Moore Iacofano Goltsman,.

**FISCAL IMPACT:**

Funding for the Study is from a variety of accounts. No new funds are being appropriated for the Urban Limit Line Study.

## **AMENDMENT TO CONSULTANT AGREEMENT BETWEEN CITY OF MORGAN HILL AND MOORE IACOFANO GOLTSMAN**

THIS AGREEMENT is made this \_\_\_\_ day of March, 2004, by the City of Morgan Hill, a municipal corporation, ("City"), and Moore Iacofano Goltsman, a California corporation ("Consultant").

### **RECITALS**

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into based upon the City of Morgan Hill's City Council approval on March 3, 2004.
2. City and Consultant desire to amend the Consultant Agreement between them dated January 22, 2003, attached as Exhibit B to this Agreement and incorporated herein.

### **AGREEMENT**

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. Terms and Conditions of Original Agreement. All terms and conditions contained in the body of the Agreement are to remain in full force and effect with the sole exception of Paragraphs 1 and 3.1, which are hereby modified as follows:

“1. Term of Agreement. This Agreement shall cover services rendered from January 15, 2003 until December 31, 2005.”

“3.1 Amount. (\$225,073). Compensation under this Agreement shall not exceed two hundred twenty five thousand, seventy three dollars.”

2. Terms and Conditions of Exhibit to Original Agreement. All terms and conditions contained in Exhibit A to the Original Agreement are to remain in full force and effect with the exception of the following Tasks, which scope, budgets, and compensation are hereby modified as follows:

- a. Task 3, Meetings With Citizens Advisory Committee: The total number of meetings is reduced from 12 to 11. The budget for Task 3 is reduced from \$32,875 to \$30,175.
- b. Task 5, Planning and Analysis, Assess Future City Land Needs and Development Patterns: The work to be undertaken by the consultant is reduced to that provided through December 31, 2003. The budget is reduced from \$22,100 to \$13,800.
- c. Task 6, Planning and Analysis: Areas Outside the Urban Limit Line: The work to be undertaken by the consultant is reduced to that provided through December 31, 2003. The budget is reduced from \$20,720 to \$9,320.
- d. Task 9, Prepare Administrative Draft – Urban Limit Line Report: The task is redefined to: Provide graphic assistant to the City of Morgan Hill for preparation of the Administrative Draft Urban Limit Line Report. The budget is reduced from \$16,180 to \$3,000.
- e. Task 10, Adoption Process: The task is modified to eliminate MIG's hours and retain EIP's hours. The budget is reduced from \$6,788 to \$2,928.
- f. Task 11, Final Plan: The task is redefined to: Provide graphic assistant to the City of Morgan Hill for preparation of the Final Urban Limit Line Report. The budget is reduced from \$6,610 to \$1,000.
- g. New Task 12, Urban Limit Line (Greenbelt) Implementation Program: A new Implementation Program task is incorporated into the contract via this amendment. The work to be performed by the Consultant is identified in Exhibit C to the Original Agreement Amendment (Titled Urban Limit Line (Greenbelt) Implementation Program Work Scope March 3, 2004).
- h. The Contingency amount of \$20,050 in the contract budget adopted on January 5, 2003 is allocated to the Urban Limit Line Study.

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- i. MIG's compensation for tasks 1 through 11 of the approved contract is reduced from \$133,500 to \$88,450.
- j. For task 12, compensation of \$46,390 is allocated in the following manner:
  - Moore Iacofano Goltsman: \$11,210
  - Robert Odland: \$12,180
  - Economist: \$23,000

**CITY OF MORGAN HILL**

**MOORE IACOFANO GOLTSMAN**

By: \_\_\_\_\_  
J. Edward Tewes

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED:**

\_\_\_\_\_  
Jack Dilles, Risk Manager

**ATTEST:**

\_\_\_\_\_  
Irma Torrez, City Clerk

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Helene L. Leichter, City Attorney

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## **EXHIBIT C**

### **URBAN LIMIT LINE (GREENBELT) IMPLEMENTATION PROGRAM SCOPE OF WORK March 3, 2004**

#### **Background**

At the November 24<sup>th</sup> Committee meeting, Bob Odland identified two Implementation Strategies: Comprehensive and Phased. Both strategies include the following elements with the difference being the amount of work, under a Phased approach, that is deferred to the implementation of the Program. Elements of the strategies include:

- Regulatory/compensatory approaches
- Compatible/allowable uses
- Cost of acquisition (order of magnitude)
- Priority areas/principles (preliminary for Phased approach)
- Parcel data base (only defined for Phased approach)
- Implementation structure and staffing
- Existing policies and regulations
- Operating Manual (preliminary for phased approach)
- Environmental review

#### **Discussion**

##### Additional Evaluation of the Southeast Quadrant

The Advisory Committee, on January 9, 2004, expressed interest in modifying the Scope of Work to add evaluation of the use of an assessment district or other shared funding techniques and the use of a specific or master plan to address future development and creation of a greenbelt in the southeast quadrant of the Sphere of Influence. A new Task 12 has been added to the Scope of Work to address these issues. Task 12 assumes that a five person sub-committee will be appointed to work with staff and the consultants on these issues.

##### Phased approach

It is assumed that a Phased approach will be undertaken with the work divided into two segments. Part I will create information sufficient to identify implementation policies and the structure of an Implementation Program. Part II, which will occur after the policies are adopted, involves developing the specific ordinances, agreements and other documents needed to start the program. The Urban Limit Line Advisory Committee will remain in place through Part I. The resources needed to complete Part II will be identified in Part I.

### Geographical area

The Implementation Plan will address Greenbelt issues for the full Sphere of Influence including the possibility of having prime agricultural land southeast of the City be located outside the Urban Limit Line.

### City and County review

The Work Scope includes a review process that provides opportunities for the City Council and the County to have review opportunities while the Committee work is underway. The City and County reviews are intended to minimize the potential for a Committee recommendation that is considered inappropriate and not suitable for adoption. Authorization to begin the environmental review is a City Council decision made after reviewing the Committee's recommendations.

### Specific Plan and Identification of Industrial Park

The Work Scope incorporates the Committee's October 13, 2003 motions ("Consider an approximately 200-acre industrial park inside the Urban Limit Line in the vicinity of the Tennant and Murphy intersection." and "The Urban Growth Boundary should not be adjusted for an industrial park until the boundaries are adjusted in a future General Plan update.")). Committee members have raised the possibility of addressing issues in the southeast section of the Sphere of Influence through either a future Specific Plan or by having the Committee identify a specific Research Park boundary. Neither approach is part of this Scope of Work. The Specific Plan would be a major land use planning effort using significantly different and larger types of outside resources. Future use of a Specific Plan will be evaluated in the Implementation Program and may be warranted as a follow up to the current study. Identification of a specific boundary for a future Research Park would require the City to address the issue of mitigation for the loss of prime agricultural land. As discussed below, that is not recommended as part of the Committee's work.

### Mitigating the Loss of Prime Agricultural Land

The following task list does not include the identification of a mitigation program for the conversion of prime agricultural land to urban uses. If the Committee wants to recommend amendment of the General Plan to identify a specific location for a Research Park, including modification of the Urban Growth Boundary, the environmental impact of the loss of prime agricultural land will have to be addressed. A mitigation program for the loss of prime agricultural land would possibly provide resources for securing conservation easements. Thus proceeding without such a program means that the Implementation Program will be missing an element that, under some circumstances, might be important. Mr. Odland told staff that he assumed, when meeting with the Committee, that an agricultural land mitigation program would be one of the available implementation tools.

Development of a program to mitigate the loss of prime agricultural land is not part of the Work Scope for several reasons. First, development of such a program, unless the intent was to duplicate what Gilroy is doing, will be a time consuming and complicated task. Second, to be useful, the mitigation program must be acceptable to both the local



jurisdiction and to the Santa Clara County Local Agency Formation Commission (LAFCO). At this time, there is no clear direction from LAFCO regarding what is an acceptable mitigation program. That issue is likely to be the focus of Gilroy and LAFCO during a considerable part of 2004. The resolution of the issue by LAFCO and Gilroy will probably set a standard that LAFCO will apply to applicable part of the County, including unincorporated land outside Morgan Hill. When that standard is identified, then Morgan Hill can identify how best to address the mitigation issue.

In conclusion, investigating and reaching a recommendation on the issue of mitigating the loss of prime agricultural land will add complexity, time and costs to development of the Implementation Plan. The following Work Scope assumes that a specific Research Park location will not be part of the Committee's recommendations.

#### Impact of Reordering Existing City Contract with MIG

The savings from the current MIG contract are about \$70,000, including the \$22,050 contingency. The MIG contract also has \$57,300 for the environmental review. The savings come from the following contract items:

- Delete attendance at the 12<sup>th</sup> Committee meeting (includes deletion of meeting notes);
- Savings from land use needs analysis previously done by the City as well as work yet to be done;
- Have the City prepare the draft and final ULL Committee report; and
- Have consultants not present for Committee/Commission/Council review process.

*Shifting the draft and final Committee report to the City means that the report will be shorter with fewer graphics, printed on standard paper and spiral or staple bound. Saving the \$70,000 in the MIG contract will be offset by some additional staff and Contract Planner expenses including resources for the work identified in Task 12.*

Reordering the MIG contract, including the \$22,050 contingency, still results in savings of MIG contract funds for the City.

The following information is organized under the following headings:

- Work Tasks for Development of an Implementation Plan
- Timeline including Advisory Committee Meetings with agenda topics

#### **Work Tasks for Development of an Implementation Plan**

##### **1. Survey of Five Agencies with Land Preservation Programs**

###### Work:

Identify agencies that have ULL/Greenbelt programs with some similarities to Morgan Hill. Develop a detailed questionnaire to be used in interviewing senior agency staff. Interview staff from five agencies and obtain copies of applicable documents. Prepare interview summaries including linking the information to appropriate work tasks.

Work Product:

Memo that summarizes interviews and identifies information applicable to Morgan Hill.

Resources:

Bob Odland (10 hours): Guidance regarding appropriate agencies; review of questionnaire; guidance regarding applicable information.

MIG (5 hours): Review of questionnaire; guidance regarding applicable information.

Planner (65 hours): Prepare the questionnaire; conduct the interviews; document the interviews; prepare memo.

2. Identification of land preservation mechanisms

Work:

Information provided by the MIG team identifies mechanisms. Prepare an assessment of the pros/cons and potential pitfalls of each mechanism as well as examples where they have worked (and not worked) and recommendations for use by Morgan Hill.

Work Product:

Memo summarizing the information mechanisms.

Resources:

Odland (20 hours): Prepare work product.

MIG (5 hours): Review/comment on work product.

Planner (5 hours): Review/comment on work product.

3. Parcel data base definition

Work:

Identify parcel data needs (divided into essential and desirable categories) and estimate resources necessary to collect and organize the data. Assume that identification of the types of data is part of the survey of agency staff.

Evaluate City Geographical Information System (GIS) to determine capability to provide the data and what resources (staff time and technical upgrades) would be needed.

Identify/map underlying lot/parcel lines in the southeast (needed for realistic assessment of southeast area easement/land acquisition costs). It appears that this mapping is electronically difficult and may be easier if done by hand methods. It is assumed that other data needs for development of the Implementation Plan, Part I are available from existing maps and other material.

Work Products:

Memo summarizing data categories, how essential they are, capability of City Geographic Information System to provide the data and estimate of time and cost to develop data.

Map of underlying property lines in the southeast portion of the Sphere of Influence.

Resources:

Data collection is part of agency staff survey.

MIG (5 hours): Evaluation of City GIS system .

Planner (10 hours): Preparation of memo.

Mapping southeast parcel lines: City staff.

4. Evaluation of options regarding County land use policies and regulations

Work:

Analyze consistency between Greenbelt area principles and County plans and regulations (e.g. relation of residential development standards with intent of a Greenbelt).

Develop potential modifications of City and/or County plans and development regulations.

Work Products:

Memo

Resources:

Odland (10 hours): Coordinate analysis.

MIG (5 hours): Assist in analysis.

Planner (20 hours): Assist in analysis and prepare memo.

Part II tasks: Potential modification of County development regulations.

5. Assessment of applicable funding sources (local, state, federal, private, and non-profit)

Work:

Supplement initial funding source information with written and web program descriptions and interviews with staff from other jurisdictions. Assemble data on each funding source including:

Name

Funding amounts---total, single project, match.

Restrictions (written and other decision making factors).

Likelihood of applicability.

Likelihood of availability.

Summary of initiation/application procedures.

Administrative time assumed for applications and whatever follow up is necessary

Sources of additional information.

Work Product:

Memo transmitting information and assessment of applicability to Morgan Hill.

Resources:

Incorporate collection of some data into agency survey.

Odland (10 hours): Information identification.

Planner (40 hours): Information identification and preparation of memo.

6. Identification of an order of magnitude range of easement/land acquisition costs.

Work:

Identify a range of possible market values and conservation easement values for the Southeast Area.

and for hillside greenbelt locations.

Interview real estate professionals familiar with Morgan Hill.

Translate valuation data and interviews into conclusions regarding a range of costs associated with different land preservation strategies.

Work Product:

Memo presenting and analyzing the data.

Resources:

City: Access to MLS sales data.

MIG (5 hours): Coordination of sub-consultant work and analysis of written products.

Planner (50 hours): Collect and analyze data; interview two or three real estate brokers; prepare memo.

Consulting Appraiser (\$3000): oversee work and provide advice based on professional knowledge and understanding of the area.

Economist (\$3000): provide assessments of data.

7. Administration/land management procedures, staffing levels and costs

Work:

Use the agency surveys to identify:

administrative/land management procedures;

information sufficient to provide the details for program staffing decisions (i.e. City staffing or contract with an outside agency).

Work Product:

Memo identifying examples of procedures and staffing, including an estimate of a basic/minimum administrative cost.

Resources:

Collect information in agency survey.

Planner (15 hours): Assemble information and prepare memo.

Odland (5 hours): Data analysis and guidance re the memo.

MIG (2 hours): Review memo.

Part II tasks:

Establish budget.

If City does not directly administer the program negotiate an agreement with an outside party.

8. Acquisition Principles and Priorities (preliminary).

Work:

Facilitate Committee identification of draft Principles (possibly including use of a sub-Committee) and land acquisition priority categories.

Review draft Principles and priority categories with City Council

Assign Greenbelt lands into possible acquisition categories and evaluate the categories regarding benefits and relation to Principles.

Link Principles and acquisition categories to identify possible implementation program.

Work Products:

List of Principles (series of lists).

Memo analyzing acquisition priorities for Greenbelt lands.

Preliminary Implementation Program.

Resources: (this task has the highest degree of resource uncertainty because the process should lead participants to realize that there are difficult tradeoffs).

Planner (100 hours): Identify initial Principle and priority categories; respond to Committee discussions, analyze lands and link to priority categories; prepare written products including final memo.

Odland (10 hours): assistance with identification of principal and priority categories, review of draft written material.

MIG (20 hours): assistance with identification of principal and priority categories, review of draft written material and some mapping.

9. Proposed Program and funding needs (land/easement acquisition, program management, property operation)

Work:

Compilation of information from items 1 through 8.

Identify assumptions for a possible five year program and calculate funding costs.

Work Product:

Memo describing possible program and cost assumptions.

Resources:

Planner (20 hours): Memo preparation.

Odland (2 hours): Review and comment on draft memo.

MIG (2 hours): Review and comment on draft memo.

10. Assessment, in general terms, of potential intended and unintended impacts of the Proposed Program.

Work:

Identify likely intended and unintended consequences of the Proposed Program on the City. Issues to be evaluated include topics such as development trends and City and other governmental agency revenues and expenses.

Work Product:

Review of the information collected and work products to identify issues to be incorporated into a memo assessing issues and potential impacts of the Program.

Resources:

Economist (\$10,000): participate in staff/consultant meetings, monitor and comment on work tasks, attend two Committee meetings and provide written conclusions.

Planner (20 hours): coordination and provide linkage to work tasks, review draft written products.

Odland (5 hours): review and comment on issues and draft work.

MIG (5 hours): review and comment on issues and draft work.

11. Public Meetings (specifically for the Implementation Plan)

Work:

Advisory Committee (four meetings): The scope of work assumes that the Advisory Committee will devote four meetings (four hour meetings) to Implementation issues.

City Council: Two meetings to review and discuss status reports.

County HULET status report.

Work Product: Agenda preparation, meeting attendance and follow up.

Resources (for meeting preparation, meeting time and follow up including, for the Advisory Committee, preparation of meeting minutes).

Planner (115 hours).

12. Identification of Planning and Funding Techniques for the Southeast Quadrant of the Sphere of Influence

Task and Work Product:

Investigate and make recommendations regarding future use of assessment district or other funding means and specific/master plan techniques for planning the southeast quadrant of the Sphere of Influence (i.e. land with a Rural County land use designation in the area bounded by Highway 101, San Pedro, Maple and the eastern foothills). Recommendations will address:

- The technique/tool for doing land use planning in the southeast area including creation of a greenbelt;

- The techniques/tools for funding both the planning effort and implementation of a future land use plan;
- The geographic area that will be the subject of the future planning effort;
- Trigger mechanisms for initiating the land use planning effort; and
- Specific wording for amending the General Plan to address the planning effort.

Work:

1. Identify and evaluate alternative master planning techniques and recommend a preferred alternative.
2. Identify and do a preliminary economic evaluation of alternative funding techniques to determine the relation between the costs of future improvements (e.g. streets, sewers, parks, greenbelt) and the benefits created by the improvements. Recommend a preferred technique or set of techniques.
3. Identify the timing for preparation of a master plan and implementation of funding techniques and trigger mechanisms that would be appropriate for identifying when the work should begin.
4. Identify Policies and Actions that would be recommended for inclusion into the Morgan Hill General Plan.

Committee meeting assumptions:

The Mayor will appoint a five member subcommittee to work with staff and consultants on the task. The subcommittee will make recommendations to the Advisory Committee. The subcommittee will meet six times over a three to four month period.

Meeting 1:

Purpose: ensure that subcommittee members have a consistent level of understanding of future land use assumptions, alternative funding techniques and the tool used to do the preliminary economic analysis. Establish a base of information regarding future land uses and public improvements. Identify the information that will be used in the preliminary economic analysis. Review and discuss alternative funding techniques. (Staff, Contract Planner, Bond Counsel, Economist)

Meeting 2:

Purpose: ensure that subcommittee members have a consistent level of understanding of alternative master planning techniques and conditions that could trigger a future master planning process. Review and discuss alternative master planning techniques and possible trigger mechanisms. (Staff, Contract Planner, Bob Odland, MIG)

Meeting 3:

Purpose: ensure that subcommittee members understand the conclusions of the preliminary economic analysis and the relation of the conclusion to future land use planning and funding techniques. Review and discuss results of the economic feasibility assessment. (Staff, Contract Planner, Economist)

Meeting 4:

Purpose: address questions and request for information that result from the first three subcommittee meetings. Follow up discussion of economic feasibility assessment issues. Follow up discussion of master planning techniques, funding techniques and potential trigger mechanisms. Have the subcommittee start identifying conclusions and possible recommendations. (Staff, Contract Planner, MIG, Bob Odland, Economist).

Meeting 5:

Purpose: discuss the subcommittee's conclusions and recommendations and how they translate into subcommittee recommendations including General Plan Policies/Actions (Staff, Contract Planner).

Meeting 6:

Purpose: have the subcommittee finalize and take action on their recommendations to the Advisory Committee. (Staff, Contract Planner).

Resources:

Contract Planner---(60 hours)  
Bob Odland---(15 to 20 hours)  
City Bond Counsel---Covered under existing City contract (15 hours)  
MIG---(20 hours)  
Economist---\$10,000 (40 hours Principal, 20 hours staff)

**13. Timeline (Bold items are for the Implementation Program Work Scope)**

The timeline has four Advisory Committee meetings devoted to Implementation Program issues. Having a clear agreement at the beginning of the process regarding meetings and schedule is critical. More meetings/extending the schedule results in additional costs.

**Late February /early March: Council approves amended MIG contract Scope including use of the contingency.**

March: County HULET Committee status report

**March/April: Implementation Plan data/information collection (assume March 1 start of work).**

March: Advisory Committee meeting

- Discuss Large Group Assembly Facilities (LGAF)
- Discuss Visual impact issues

**Mid-May: Advisory Committee meeting # 1 re Implementation Plan (review data/information). Discuss:**

- **County land use policies**
- **Land acquisition mechanisms**



- Funding sources
- Principles
- Factors/framework for acquisition priorities

**Late May and June---Sub-committee meetings # 1 and # 2 (see task 12 for details)**

**Late-June: Advisory Committee meeting # 2 re Implementation Plan (Draft Program and Priorities). Discuss:**

- Follow up from Meeting # 1
- Land costs
- Acquisition priorities
- Principles

**Late June and July---Sub-committee meetings # 3 and # 4(see task 12 for details)**

**Late July and August---Sub-committee meetings # 5 and # 6 (see task 12 for details)**

**Late July: Advisory Committee meeting # 3 re Implementation Plan (review consequences of taking actions and make initial recommendations).**

**Receive and review/discuss information**

- Procedures/staffing/implementation administration costs
  - Initial information re impacts/consequences
  - Local funding sources

**Initial action items**

- Principles
- Acquisition priorities

**Discuss principles**

**Mid- to late-August---City Council Status Report**

**Late August: Advisory committee meeting # 4 re Implementation Plan to address the sub-committee recommendations for the southeast quadrant.**

September: San Martin review

Mid- to late- September: Public meeting re initial recommendations

September: South County Joint Planning Advisory Committee review

**October: Advisory Committee meeting # 5 re Implementation Plan to make recommendations and other final Committee recommendations and discuss/identify environmental issues.**

November: City Council review and authorization of environmental review

Late November: environmental review process starts

Timeline Alternative # 1---Mitigated Negative Declaration (based on schedule provide by EIP Associates, total time under best case scenario approximately 20 weeks or 5 months from start-up).

Timeline Alternative # 2---Environmental Impact Report (based on schedule provided by EIP Associates, total time under best case scenario approximately 33 weeks or 8 months from start-up

Committee review of draft and final Committee report---not scheduled.

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## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: March 3, 2004***

### **REGULATION OF WIRELESS ANTENNAS AND OTHER TELECOMMUNICATIONS FACILITIES**

**RECOMMENDED ACTION(S):** Provide Direction to Staff

**Agenda Item # 20**

**Prepared By:**

**Assistant to the City  
Manager**

**Submitted By:**

**City Manager**

**EXECUTIVE SUMMARY:** At a prior Council meeting, the Council received input from Christopher Cote' regarding concerns relating to the siting of wireless antennas and other telecommunications facilities. Some members of the Council indicated an interest in pursuing the development of an ordinance regulating these facilities.

The regulation of these facilities is a complex legal area that will require a substantial amount of staff time and legal work to address. In addition to local interests and values, any expanded City regulation of these facilities will need to be consistent with State law, California PUC regulations, Federal law, and FCC regulations. In addition, it is also probable that public workshops will need to be convened in order to provide ample opportunities for public input.

Before pursuing this issue, staff wanted the Council to verify that this is a priority interest of the Council that the City should address.

**FISCAL IMPACT:** If the Council directs staff to develop an ordinance addressing these facilities, it will involve an undetermined expense on special counsel and will divert staff activities from other City projects.



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: March 3, 2004***

**Agenda Item # 21**

**Prepared By:**

**Council Services &  
Records Manager/City  
Clerk**

**Submitted By:**

**City Manager**

### **TITLE: SCHEDULE DATE(s) TO INTERVIEW APPLICANTS TO FILL UPCOMING VACANCIES ON THE LIBRARY AND PARKS & RECREATION COMMISSIONS**

#### **RECOMMENDED ACTIONS:**

Identify Date(s) to Conduct Interviews

#### **EXECUTIVE SUMMARY:**

The City Clerk's office has solicited to fill upcoming vacancies to the Library and Parks and Recreation Commissions via City Visions, the City's Government Access Channel and the Morgan Hill Times.

The make up of the Library Commission consists of up to nine members. There are currently eight members on this commission. Terms for five commissioners will expire on April 1, 2004; one of these five terms has a current vacancy. The four commissioners who have upcoming vacancies have been invited to apply for reappointment.

The Parks & Recreation Commission consists of seven members. Four terms are due to expire on April 1, 2004. Letters have been sent to commissioners who have terms expiring on April 1, 2004, inviting them to apply for reappointment as well. One of the Parks and Recreation Commissioners who has a term expiring on April 1 is requesting that the Council conduct interviews prior to March 22.

Staff is requesting that the City Council identify a convenient date(s) to interview. Staff will note that Council Member Tate serves as the Council Liaison to the Santa Clara County Library District Joint Powers Authority and is working diligently with the Library Commission toward State funding for the construction of a new library. Council Member Tate may wish to request that appointments to the Library Commission be deferred to early April 2004 in order to allow him the opportunity to participate in the interview/appointment process. The Library Commission is not scheduled to meet until April 12. Therefore, there is some flexibility in deferring appointments to early April.

Staff has attached copies of the Council's March and April calendars to assist in scheduling Commission interviews.

**FISCAL IMPACT:** There is no fiscal impact associated with this staff report.